



## **Arlington Zoning Board of Appeals**

**Date:** Monday, July 26, 2021  
**Time:** 7:30 PM  
**Location:** Conducted by remote participation  
**Additional Details:**

### **Agenda Items**

#### **Administrative Items**

##### **1. Remote Participation Details**

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency, the Arlington Zoning Board of Appeals meetings shall be physically closed to the public to avoid group congregation until further notice. The meeting shall instead be held virtually using Zoom.

Please read Governor Baker's Executive Order Suspending Certain Provision of Open Meeting Law for more information regarding virtual public hearings and meetings: <https://www.mass.gov/doc/open-meeting-law-order-march-12-2020/download>

You are invited to a Zoom meeting.

When: Jul 26, 2021 07:30 PM Eastern Time (US and Canada)

Register in advance for this meeting:

<https://town-arlington-ma-us.zoom.us/meeting/register/tZwsf-isrjgtHNc3quaoPWIBMCjXismTql95>

After registering, you will receive a confirmation email containing information about joining the meeting.

Meeting ID: 881 8140 3763

Find your local number: <https://town-arlington-ma-us.zoom.us/j/adNWeNXzLr>

Dial by Location: 1-646-876-9923 US (New York)

#### **Comprehensive Permits**

##### **2. 1165R Massachusetts Avenue**

#### **Meeting Adjourn**



## **Town of Arlington, Massachusetts**

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### **Remote Participation Details**

#### **Summary:**

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## Town of Arlington, Massachusetts

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### 1165R Massachusetts Avenue

#### ATTACHMENTS:

Type	File Name	Description
Reference Material	Draft_Permit_Conditions_Mirak_Civil_Wetlands_Traffic_Peer_Review_20210702.pdf	Draft Permit Conditions Mirak Civil Wetlands Traffic Peer Review 20210702
Reference Material	1165R_Mass_Ave__Decision__Second_Draft.pdf	1165R Mass Ave, Decision, Second Draft
Reference Material	C_Klein_letter_to_M_O_Connor_7-19-21.pdf	C Klein letter to M O'Connor 7-19-21
Reference Material	M_O_Connor_response_letter__7-19-21.pdf	M O'Connor response letter 7-19-21
Reference Material	20210714_Draft_Decision_1165R_Mass_Ave_Department_Comments_(1).pdf	20210714_Draft Decision_1165R Mass Ave_Department Comments (1)
Reference Material	Letter_to_Christian_Klein_re_Comprehensive_Permit_re_1165R_Mass_Ave_-_Spaulding.pdf	Letter to Christian Klein re Comprehensive Permit re 1165R Mass Ave - Spaulding

July 02, 2021

Christian Klein, Zoning Board of Appeals

Town of Arlington  
50 Pleasant Street  
Arlington, MA 02476

**Re: 1165R Massachusetts Avenue - Arlington, MA  
Comprehensive Permit Civil Special Conditions Recommendations**

Dear Mr. Klein:

As requested, BETA Group, Inc. (BETA) is providing Recommended Conditions for the Draft 1165R Massachusetts Avenue MGL Chapter 40B Comprehensive Permit. Where appropriate, we have taken recommendations from our latest Civil/Wetlands/Traffic Peer Review Comment Letters and incorporated them as recommended Permit Conditions. These Draft Findings and Recommended Conditions consolidate BETA's Recommended Draft Findings and Permit Conditions with those issued by the Arlington Conservation Commission (ACC) on June 25, 2021. Findings and Conditions proposed by the ACC are labeled following the condition with "(ACC)".

**RECOMMENDED CIVIL/ SITE PLAN/ STORMWATER CONDITIONS**

1. The Applicant shall submit a complete set of final plans reflecting the various changes in the design that have occurred during the review process. The plans should reflect changes to surface parking, proposed grading, stormwater systems, the stream channel cross section and other relevant site features.
2. The Applicant shall provide an Erosion and Sediment Control Plan as part of the final plan set indicating the type and location of proposed erosion controls. Additional erosion controls shall be shown around the relocated Ryder Brook channel.
3. The Applicant shall coordinate with the Arlington Public Works Department and local utility companies regarding all proposed site utility connections to confirm compliance with applicable construction standards.
4. The location of the existing utility pole within the right of way from Massachusetts Avenue has been noted as a safety concern by the Board and the public. The Applicant has indicated that the existing utility pole cannot be relocated due to various constraints. The Applicant has stated that they have worked with the utility owner and adjacent property owner but have not come to a feasible resolution. The Applicant should continue to work to resolve this issue including further exploration of relocating the pole further east but within the right of way. Prior to initiating construction, the Applicant shall provide the Board with a written summary of the coordination efforts between the Applicant and the utility owner regarding the relocation of the pole. If it is finally determined that the pole cannot not be relocated, the Applicant, prior to construction, shall provide the Board with a plan for mitigating safety and visibility issues related to the pole.

5. Prior to construction, the Applicant shall prepare a Construction Management Plan (CMP) for review and approval by the Board. The CMP will provide documentation of various construction related activities. The CMP should include:
  - Project Description and outline of primary construction tasks
  - Project Schedule including hours of operation, duration of primary construction tasks and estimated completion date.
  - Project logistics related to maintaining flow through the Site within Ryder Brook
  - Project logistics including staging areas, truck routes, laydown areas, contractor parking and traffic management.
  - Site Management including noise mitigation, dust control and security.
  - Public Safety and Coordination including contact information and site inspections.
  - Provide advance E-mail or website information regarding construction activities for public information.
6. Ryder Street shall not be used for construction deliveries between the hours of 7:30 AM to 8:30 AM and 3:00 PM to 4:00 PM on school days as provided in the letter from Krattenmaker, O'Conner & Ingber, PC to Christian Klein, Chairperson dated June 8, 2021.
7. The Applicant shall perform a preconstruction and post construction survey of adjacent properties on Ryder Street and the Massachusetts Avenue right of way including photographs and/or video.
8. The Applicant shall monitor vibrations in the vicinity of the properties adjacent to Ryder Street throughout the course of construction. The location of vibration monitors shall be coordinated with the Board or its designee.
9. The Applicant has submitted truck path diagrams to the Board showing turning paths for construction vehicles accessing the site. The diagrams were prepared by Bohler Engineering dated June 7, 2021. The truck paths shall be maintained free of stockpiles, stored equipment, debris and other construction materials to ensure adequate construction and emergency access.

### Stormwater Management

1. To avoid adding excess nitrogen runoff, the Applicant shall only treat the planted areas within resource areas with slow-release nitrogen fertilizer. Application of this fertilizer cannot occur in the summer, or after storm events. Lawn fertilizer shall only be applied twice a year, in spring and fall. The application of plant nutrients shall otherwise comply with 330 CMR 31.00. No other herbicides or treatment methods are approved. No pesticides or rodenticides shall be used to treat pest management issues within Resource Areas. **These shall be continuing conditions in perpetuity that survives the expiration of this permit.** (ACC)
2. Pervious surfaces shown on the project plans shall be maintained as specified in the stormwater report and logs/reports shall be maintained by the Applicant. Pervious surfaces shown on the project plans shall not be replaced by impervious surfaces. **This shall be a continuing condition in perpetuity that survives the expiration of this permit.** (ACC)
3. No snow storage is permitted within the AURA or other Resource Areas. A snow storage plan shall be submitted to the ZBA prior to construction completion. If these areas are insufficient for storage during the snow season, snow shall be removed from the site. Sediments and debris

shall be removed from snow storage areas in the early spring. **This shall be a continuing condition in perpetuity that survives the expiration of this permit.** (ACC)

4. The Applicant shall protect all adjacent catch basins using silt socks during construction. (ACC)
5. The Applicant shall conduct catch basin sump cleanings at the end of the project work period. (ACC)
6. The Applicant shall submit copies of the SWPPP inspection reports to the ZBA within 10 days of the date of each report. (ACC)
7. The Applicant shall submit a revised final Stormwater Report including Operations and Maintenance Plan documenting the various changes in the design that have occurred during the review process.

#### **RECOMMENDED TRAFFIC CONDITIONS**

8. Site access will be provided via Ryder Street to the west, an existing right of way from Massachusetts Avenue to the south, and Quinn Road to the east. The Site will be signed directing vehicles to enter via the Massachusetts Avenue right of way or Quinn Road and exit via Ryder Street. Both the Ryder Street and Massachusetts Avenue /Quinn Road driveways will allow two-way travel for existing abutting uses.
9. The Applicant shall install all proposed traffic signs and pavement markings shown on the approved final plans. Signs and markings shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), latest edition and other applicable state or local requirements.
10. The proposed site provides 128 parking spaces in a combination of structured garage spaces and surface parking spaces. No changes to the number, configuration or designation of parking spaces shown on the final approved plans shall be made unless approved by the Board through a modification process.
11. Turn restrictions shall be incorporated for vehicular traffic exiting the property at Ryder Street. These restrictions include prohibiting right turns onto Ryder Street except for bicycles. Parking restrictions for residents shall also be incorporated. To reinforce these restrictions, the Applicant shall:
  - a. Provide a transportation package to all residents which shall include turn restrictions at Ryder Street, access/egress restrictions, no resident or guest parking on Ryder Street.
  - b. Have the on-site property manager promptly address any reported infractions with the resident including providing written warnings.
  - c. Advise residents who have repeated infractions and warnings that their lease will not be renewed once it terminates.
12. Guest parking will be managed by the on-site property manager. Guest parkers shall be required to register their vehicles with the property manager in advance and shall be assigned a designated parking space.
13. Four (4) short term parking spaces shall be provided and maintained in the courtyard for taxis, rideshare vehicles, deliveries and visitors remaining for 1 hour or less.

## **RECOMMENDED RESOURCE AREA FINDINGS AND CONDITIONS**

### **Recommended Findings**

14. In the fall of 2020, the Applicant filed a Request for Determination of Applicability (RDA) to determine the Resource Area jurisdictions of the property under the Wetlands Protection Act. The Arlington Conservation Commission (ACC) issued a determination (October 24, 2020) that Ryder Brook is not jurisdictional as a stream under the MassDEP Wetlands Protection Act (WPA). However, the ACC distinguished that Ryder Brook is jurisdictional as an intermittent stream under the Arlington's Wetland Bylaw and implementing Regulations (ACC).
15. The Project Site contains several resource areas Subject to Protection under the Act, its Regulations, and the Bylaw:
  - Bank to Mill Brook (Perennial Stream)
  - Bank to Ryder Brook (Intermittent Stream – Jurisdictional under the Bylaw only)
  - Land Under Waterbodies - Mill Brook
  - Land Under Waterbodies - Ryder Brook (Bylaw only)
  - Bordering Land Subject to Flooding associated with Mill Brook.
  - 200-foot Riverfront Area to Mill Brook
  - 100-foot Adjacent Upland Resource Areas (AURA) associated with Mill Brook and Ryder Brook (Bylaw only)
  - 100-foot Buffer Zone to on-site Areas Subject to Protection under the Act and Bylaw (ACC).
13. Due to the location of Mill Brook and Ryder Brook, most of the jurisdictional Resource Areas within the site are the 100-ft Wetlands Buffer, the Adjacent Upland Resource Area (AURA), and the 200-ft Riverfront Area. The floodway and floodplain are generally confined to the channelized Mill Brook (ACC).
14. In addition to reviewing the jurisdiction of Ryder Brook through the RDA process, the ACC also determined that a significant portion of the site is exempt from the Riverfront Standards of the WPA and Bylaw due to the Historic Mill Complex Exemption (310 CMR, Section 10.58 (6) (k)). The limits of the Historic Mill Complex are delineated on the plan entitled "Pre-1946 Mill Complex Footprint Exhibit" prepared by Bohler Engineering, dated August 7, 2020, revised September 21, 2020 (ACC).
15. The Project will require an Order of Conditions from the Arlington Conservation Commission for work in areas Subject to Protection and Jurisdiction pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 (the Act) and its Regulations (310 CMR 10.00) (ACC).
16. In its current condition, the site contains a total of 4,135 square feet of pervious surface in the AURA (2,507 square feet in the 0-25 ft zone of the AURA and 1,628 square feet in the 25-75-foot zone of the AURA). The project as proposed would increase the amount of pervious surface by 7,315 square feet, from 4,135 square feet to 11,450 square feet. The proposed 0-25-foot zone would have 4,012 square feet of pervious surface and the 25-100-foot zone would have 7,438 square feet of pervious surface (ACC).

17. In its current condition, the site contains a total of 3,416 square feet of pervious surface in the 200-ft Riverfront Area. The project proposal would increase the amount of pervious surface by 5,342 square feet, from 3,416 square feet to 8,758 square feet (ACC).
18. The proposed plan for relocating Ryder Brook provides enhanced resource area functions to the site, including habitat value, pollution prevention, storm damage prevention, and flood control. The existing Ryder Brook is approximately 120 linear feet long, and the proposed relocated Ryder Brook is approximately 200 linear feet long. The existing Ryder Brook has approximately 250 linear feet of Bank and 816 square feet of Land Under Water. The proposed relocated Ryder Brook has approximately 363 linear feet of Bank and 1880 square feet of Land Under Water. Ryder Brook currently contains mostly non-native plants. The proposed planting plan for Ryder Brook contains all native plants and coir fascine for natural erosion control and bank stabilization (ACC).
19. ACC maintains that the project as proposed complies to Section 25D of the Arlington Regulations for Wetlands Protection because the plan proposes mitigation to increase the pervious area in the 0-25' AURA, which is considered an enhancement of the resource area (ACC).
20. ACC maintains that the project as proposed complies to Section 25C of the Arlington Regulations for Wetlands Protection because the Applicant submitted an Alternatives Analysis prepared by Bohler Engineering (ACC).
21. ACC maintains that the project as proposed complies to Section 4(b) of the Arlington Regulations for Wetlands Protection because of the vegetative mitigation and resource area improvements, including improvements to habitat value, pollution prevention, storm damage prevention, and flood control along the relocated Ryder Brook and Mill Brook (ACC).
22. The Applicant used NOAA 14+ data for the proposal's stormwater management calculations, which is consistent with current best practices to represent the expected precipitation (ACC).
23. The Project, as proposed, does not require any impacts to the FEMA Floodway or 100-Year FEMA Floodplain.
24. The Project, as proposed, complies to Section 25E of the Arlington Regulations for Wetlands Protection because the plan will result in a decrease in total impervious surface within the first 50 feet of the AURA, which is considered an enhancement of the resource area.
25. The Project, as proposed, complies to Section 25F (1 and 2) of the Arlington Regulations for Wetlands Protection because the Project results in a decrease in total impervious surface within the AURA and there will be an enhancement of the Resource Area values. In addition, the Project significantly decreases the total impervious area onsite, and plantings are proposed throughout the development.
26. The Notice of Intent filed under the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and its Regulations (310 CMR 10.00) shall also include a detailed evaluation addressing all requirements under the Application for Vegetation Removal in accordance with Section 24 – Vegetation, E (1) through E (7) of the Arlington Wetlands Protection Bylaw. This should include the elements described in the guidance provided in Section 24 E as follows:



- Narrative describing existing conditions, proposed plantings, list of existing and proposed species, size of existing species and proposed species, quantity plants before and after revegetation and the rational the removal and maintenance plan.
- Affirmation of the Revegetation Activities: All plans must be accompanied by written testimony and scale diagram from a certified arborist or wetland scientist or landscape architect. The document must include at a minimum the necessity of vegetation removal, surface area to be removed, quantity of individual plants by species.
- Planting Plan: Drawn to scale, properly identified resource area and buffer zone and the project site, location of replacement species, comply with (AAN), erosion controls, estimated tree canopies after 15 years of growth, name, sizes and locations of trees to be planted, and total area of SF of the area shaded by the canopies.
- Existing species list
- Replacement species list
- Rational for Removal
- Maintenance Plan

### **Pre-Construction**

27. Erosion control measures shall be installed per the approved plans (ACC).

### **During Construction**

28. Stockpiled materials in the AURA or other Resource Areas shall be covered or managed to prevent sedimentation into and damage to Mill Brook and the relocated Ryder Brook (ACC).
29. No dumpsters shall be allowed within the AURA or other Resource Areas (ACC).
30. No heavy equipment may be stored overnight within the AURA or other Resource Areas and no refueling, or maintenance of machinery shall be allowed within the AURA or other Resource Areas (ACC).
31. Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily (ACC).
32. Any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain, or adjacent property. Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin (ACC).

### **Professional Monitoring**

33. Prior to commencement of construction, the Applicant must hire a qualified environmental monitor with professional credentials to be selected by the ZBA and to be on-site throughout the duration of the project. This period shall begin when siltation controls are installed and shall end with issuance of a Certificate of Compliance. The monitor shall submit an electronic report to the ZBA weekly regarding construction progress, relation to resource areas, and shall state whether such work is in their professional opinion in compliance with the comprehensive permit. During the duration of the project, the qualified environmental monitor shall also submit an electronic report after every rain event exceeding 0.5 inches of rain in a 24-hour period to the ZBA regarding the condition of the site during and after the rain event, as well as

the status of erosion controls and any additional measures to address stormwater management issues caused by said rain event. The ZBA reserves the right to change the frequency of inspections based on contractor performance, weather, or site conditions. All materials required to be submitted to the ZBA shall also be submitted to the Environmental Monitor (ACC).

34. The Applicant must hire a professional engineer to oversee the installation of the stormwater management system. A stormwater mitigation report must be submitted to the ZBA within 10 days of the completion of the stormwater management system. The stormwater report shall include as-built plans, photographs from installation, and a written summary of the installation of the stormwater management system and stormwater best management practices (e.g., porous pavement and other stormwater features, as applicable) (ACC).
35. The Applicant shall submit the contact information of the party responsible for monitoring and maintaining the planted vegetation within stream relocation areas to the ZBA. Should any changes be made to this party, the ZBA shall be notified. **This shall be a continuing condition in perpetuity that survives the expiration of this permit.**

### **Recommended Plantings and Landscape Plan**

36. The Applicant shall submit for review and approval by the ZBA an invasive management plan for work in the AURA and other Resource Areas outlining all locations for invasive management, the species and quantities of invasive plants to be managed, and the method of management. (ACC).
37. All mitigation plantings and all plantings within resource areas shall be native and be installed and maintained according to the standards of the American Association of Nurserymen (AAN). No cultivars of native plantings shall be allowed. **This shall be a continuing condition in perpetuity that survives the expiration of this permit (ACC).**
38. All plantings planted and invasive species removed through this project in Resource Areas or as mitigation shall be monitored for three years. A monitoring report shall be submitted annually in June for the three-year monitoring period, reporting on the health of the new plantings and the success of the invasive plant management. The annual report shall identify any plantings that did not survive and summarize the replacement of the plantings. A survival rate of 80% must be achieved at the end of the third monitoring year. If there is less than an 80% survival rate of the plantings after the third year, the Applicant must submit recommendations for replacements to the ZBA for approval (ACC).
39. The Applicant shall protect all area trees per the Town Wetlands Protection Regulations, Section 24 Vegetation Removal and Replacement, protecting trees through securing (not nailing) 2x4 boards, between 6-8 feet in length, around tree base. The boards shall be installed vertically such that one end is installed directly into the ground. Alternative protection measures must be approved by the ZBA (ACC).

### **Relocated Ryder Brook**

40. The Land Under the relocated Brook (Land Under Water Bodies) shall be protected in perpetuity. **This shall be a continuing condition in perpetuity that survives the expiration of this permit (ACC).**
41. The Bank of the relocated Brook shall be protected in perpetuity. **This shall be a continuing condition in perpetuity that survives the expiration of this permit (ACC).**

42. Work associated with re-routing the Ryder Brook channel shall be completed during Phase 1 of the Construction Phasing Plan to ensure flow through the Site will be uninterrupted during construction. Within Phase 1, the following work associated with re-routing shall be completed:

- Grading the proposed Ryder Brook channel.
- Stabilizing the Ryder Brook substrate with the approved stone/substrate material
- Stabilizing the Banks and adjacent areas with seed.

43. River stone and broken stone to be used as the substrate for Ryder Brook shall consist of washed material and shall be free from overburden, spoil, shale and organic material to protect water quality.

44. Erosion controls shall be installed upgradient the Banks of the relocated Ryder Brook once the channel has been graded and stabilized.

### Mitigation

45. All mitigation as proposed as part of this project shall remain in perpetuity. The approved planting areas, invasive removal areas, the water quality units, and the stormwater system shall remain in perpetuity and if replacement is necessary, shall be subject to the approval of the Commission. **This shall be a continuing condition in perpetuity that survives the expiration of this permit (ACC).**

If you have questions about any of these conditions or findings, please feel free to contact us.

Very truly yours,

**BETA Group, Inc.**



Laura Krause  
Senior Environmental Scientist



William McGrath, P.E.  
Senior Associate

cc: Paul Haverty, Attorney  
Patrick Hanlon, Vice Chair  
Jennifer Raitt, Director of Planning and Community Development

**TOWN OF ARLINGTON  
Zoning Board of Appeals  
730 Massachusetts Avenue  
Arlington, MA 02476**

**DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT  
G.L. c. 40B, §§ 20-23**

APPLICANT: \_\_\_\_\_ 1165 R Mass MA Property, LLC ~~←~~(the  
“Applicant”)

PROPERTY: ~~1165-1167 and~~ 1165R Massachusetts Avenue, Arlington,  
MA (the “Property”)

ASSESSORS’ MAP: Assessors Parcel 57-2-10.B

DEVELOPMENT NAME: \_\_\_\_\_

DATE: July \_\_, 2021

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**I. PROCEDURAL HISTORY**

1. An application for a Comprehensive Permit was received by the Town of Arlington Zoning Board of Appeals (“Board”) on or about December 1, 2020 (“Application”). The Application proposes the development of one hundred ~~and~~ ~~twenty-four (124) thirty (130) twenty-four (130 124)~~ units of rental housing with associated parking in ~~three (3) residential four (4)~~ structures located at the Property (the “Project”).
2. The Board’s public hearing on the Application was duly opened on January 5, ~~2020~~2021, with the grant of an extension by the Applicant of the thirty (30) day deadline to open the public hearing. At its January 5, 2021 public hearing, the Board voted not to provide a notification to the Applicant pursuant to 760 CMR 56.03(8) that ~~it~~the Town met the 1.5% Land Area Minimum Safe Harbor.
3. The Project is located on the Property, which is located at ~~1165-1167 and~~ 1165R Massachusetts Avenue, Arlington, Massachusetts. The Property is located on approximately ~~2.32.0~~ acres of land.
4. The Property is located in the Industrial (I) Zoning District. Nearby uses consist of Mirak Chevrolet parking lot to the north (at 1125 Massachusetts Avenue), and Lalicata Landscaping’s yard to the north (at ~~33~~15 Ryder Street). To the south, the Property abuts the Mirak Hyundai car dealership (at 1165 Massachusetts

- ~~Avenue~~Avenue). To the east, the Property abuts the Mirak Chevrolet parking lot as well as Arlington Auto Detailing (1155R Massachusetts Avenue). To the west, the Property abuts the Robert J. Annese Law Office (1171 Massachusetts Avenue) and a condominium complex (located at 9 Ryder Street).
5. The Property consists of approximately ~~2.32.0~~ +/- acres. The Property currently contains ~~—1—three six~~ (6) existing structures on footprints comprising 25.7% of the Property. Additionally, the Property contains significant pavement, covering approximately 67.9% of the Property, for a current total impervious area of 93.6%.
6. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application.
7. The Applicant proposes the construction of one hundred ~~and thirty (130)twenty-four (124)130124~~ rental apartment units, of which thirty ~~three (33)oneone (33)131~~ units will be reserved as affordable units as determined by the Subsidizing Agency.
8. During the public hearing, the Applicant was assisted primarily by its counsel ~~May~~Mary O'Connor, Esq., of Krattenmaker, O'Connor & Ingber, P.C., its civil ~~engineersengineer~~s Bryan Zimolka, P.E. and Randy Miron, P.E., of Bohler Engineering, its architect Joel Bargmann, AIA, of BH+A Architects, and its traffic engineer Bryan ~~Simolka~~Zimolka, P.E., of Nitsch Engineering.
9. \_\_\_\_\_ The Board utilized the services of its review engineers BETA Group, Inc., with Marta Nover, - Laura Krause, Senior Environmental Scientist, Senior Associate William McGrath, P.E. handling civil engineering and wetlands peer review, and Greg Lucas, P.E., PTOE, for traffic. - The Board also utilized the services of Town Counsel Douglas Heim, Esq., ~~Planning~~Director ~~Jennyof~~ Planning and Community Development ~~Jennifery~~ Raitt, Senior Planner Kelly Lynema, Environmental Planner and Conservation Agent Emily Sullivan, and other town staff. The Board was also represented during the course of the hearing by Paul Haverty, Esq., of Blatman, Bobrowski & Haverty, LLC as its Chapter 40B technical consultant through a grant from the Massachusetts Housing Partnership.
10. During the public hearing, there was significant public input. The Board heard input from abutters and other interested persons throughout the hearing process. The Board also heard significant input from town departments, including the Conservation Commission, the Department of Planning and Community Development, and the Transportation Advisory Committee.

## II. JURISDICTIONAL FINDINGS

11. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
  - a. The Applicant is a limited liability company, and has indicated in its application that it will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 1 Office Square, Floor 26, Boston, MA 02109.
  - b. The Applicant has received a written determination of Project Eligibility from MassHousing dated November 17, 2020 under the New England Fund Program, a copy of which was provided to the Board with the original application.
  - c. The Applicant provided a copy of a letter from Julia Mirak Kew to Jessica Malcolm of MassHousing stating that a joint venture agreement ~~forming~~formed~~ing~~ by the Applicant ~~gives~~was given~~s~~ it authority to seek a comprehensive permit for the Property. The Subsidizing Agency determined that the Applicant has site control to pursue a comprehensive permit. Pursuant to 760 CMR 56.04(6), this determination is conclusive as to the issue of site control.
  - d. The Applicant has agreed to execute a Regulatory Agreement that limits its annual distributions in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by DHCD.
12. The Town of Arlington (“Town”) did not meet the statutory minima set forth in G. L. c. 40B, § 20 or 760 CMR 56.03(3) to 56.03(7) at the time the original application was filed, except as noted below:
  - a. At the time of the filing of the Application, the number of low or moderate income housing units in the Town constituted 5.7% of the total year-round housing units in the Town, based on the most recent publicly available copy of the DHCD Subsidized Housing Inventory, dated December 21, 2020. Thus, the Town does not meet the ten percent (10%) statutory

minimum.

- b. In another pending comprehensive permit application, the Board has asserted a claim that there are existing affordable housing units that are on sites that comprise more than one and one half percent (1.5%) of the total land area of the Town that is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts, or any political subdivision thereof). The Board timely asserted this claim pursuant to 760 CMR 56.03(8). The Applicant in that pending comprehensive permit matter appealed this claim to the Department of Housing and Community Development, which issued a decision dated November 17, 2016, reversing the Board's Safe Harbor determination. The Board appealed this decision to the Housing Appeals Committee. On October 15, 2019, the Housing Appeals Committee upheld the decision of the Department of Housing and Community Development. Without waiving its ~~rights~~ on the other pending application, the Board has chosen not to assert a 1.5% claim in this matter.
- c. The granting of this Comprehensive Permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
- d. The Town has an approved Housing Production Plan pursuant to 760 CMR 56.03(4), but is not currently within (or eligible for) certification.
- e. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).
- f. The Project as originally submitted does not constitute a Large Project pursuant to 760 CMR 56.03(6).
- g. The Applicant's Comprehensive Permit Application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

### III. FACTUAL FINDINGS

#### Location of Project



13. The Project is located on a previously developed 2.3 acre parcel of land located off Massachusetts Avenue in close proximity to Ryder Street. Mill Brook and Ryder Brook flows through the Property. The Property is located within the Industrial (I) Zoning District.

14. In addition to being located next to various commercial uses, the Project also abuts a residential condominium complex at 9 Ryder Street.

#### Wetlands

15. The Applicant proposes the relocation of Ryder Brook, an intermittent stream that is not jurisdictional as a stream under the Wetlands Protection Act, (“WPA”), but which is jurisdictional as an intermittent stream under the Arlington Wetlands Bylaw and Regulations.

16. The Property contains several additional resource areas under both the Wetlands Protection Act and/or the Arlington Wetlands Bylaw and Regulations. These resource areas include:

- Bank to Mill Brook (Perennial Stream)
- Bank to Ryder Brook (Intermittent Stream, local bylaw)
- Land Under Waterbodies – Mill Brook
- Land Under Waterbodies – Ryder Brook (local bylaw only)
- Bordering Land Subject to Flooding associated with Mill Brook
- 200-foot Riverfront Area – Mill Brook
- 100-foot Adjacent Upland Resource Area – Mill Brook (local bylaw only)
- 100-foot Adjacent Upland Resource Areas – Ryder Brook (local bylaw only)
- 100-foot Buffer Zone to on-site Areas Subject to Protection (WPA and local bylaw)

17. The Project, as proposed, does not require any impacts to the FEMA Floodway or 100-Year FEMA Floodplain.

17.18. The Arlington Conservation Commission provided a determination that a significant portion of the Property is exempt from the riverfront standards (under both the WPA and local bylaw) due to the Historic Mill Complex exemption, as set forth on the plan entitled “Pre-1946 Mill Complex Footprint Exhibit” prepared by Bohler Engineering and dated August 7, 2020, revised September 21, 2020.

18.19. The Project will be required to obtain an Order of Conditions from the Arlington Conservation Commission pursuant to the Wetlands Protection Act. The Project’s applicability under the Arlington Wetland Protection Bylaw has been



- substantially incorporated into this present Comprehensive Permit, and a separate permit under the Bylaw does not need to be issued by the Arlington Conservation Commission.
- ~~19.~~20. The Property currently contains 4,135 square feet of pervious surface within the AURA. The Project, by the elimination of existing impervious surfaces, will increase the pervious area within the AURA to 11,450 square feet, an increase in pervious area of 7,315 square feet. This increase in pervious area within the AURA is a net benefit to the wetlands.
- ~~21.~~ The Property currently contains 3,416 square feet of pervious area within the 200-foot riverfront area. The Project is proposed to increase the pervious area within the 200-foot riverfront area to 8,758 square feet, an increase of 5,342 square feet. This increase in pervious area results in a net benefit to the riverfront area.
- ~~22.~~ The Project is in compliance with ,as proposed, complies to Section 25E of the Arlington Regulations for Wetlands Protection because the plan will result in a decrease in total impervious surface within the first 50 feet of the AURA, which is considered an enhancement of the resource area.
- ~~23.~~ The Project is in compliance with ,as proposed, complies to Section 25F (1 and 2) of the Arlington Regulations for Wetlands Protection because the Project results in a decrease in total impervious surface within the AURA and there will be an enhancement of the Resource Area values. In addition, the Project significantly decreases the total impervious area onsite, and plantings are proposed throughout the development.
- ~~20.~~24. The proposed plan for relocating Ryder Brook provides enhanced resource area functions to the site, including habitat value, pollution prevention, storm damage prevention, and flood control. The existing Ryder Brook is approximately 120 linear feet long, and the proposed relocated Ryder Brook is approximately 200 linear feet long. The existing Ryder Brook has approximately 250 linear feet of Bank and 816 square feet of Land Under Water. The proposed relocated Ryder Brook has approximately 363 linear feet of Bank and 1880 square feet of Land Under Water. Ryder Brook currently contains mostly non-native plants. The proposed planting plan for Ryder Brook contains all native plants and coir fascine for natural erosion control and bank stabilization.
- ~~21.~~25. The Project is in compliance with Section 25D of the Arlington Regulations for Wetlands Protection because the Project proposes mitigation to increase the pervious area within the 0'-25' AURA, which is considered an enhancement of the resource area.

~~22.~~26. The Applicant submitted an alternatives analysis prepared by Bohler Engineering, in compliance with Section 25C of the Arlington Regulations for Wetlands Protection.

~~23.~~27. The Project will provide vegetative mitigation and resource area improvements, including improvements to habitat value, pollution prevention, storm damage prevention, and flood control along the relocated Ryder Brook and Mill Brook, all in compliance with Section 4(b) of the Arlington Regulations for Wetlands Protection, as shown on the Approved Plans.

~~24.~~28. The Applicant utilized NOAA 14+ data for the stormwater management calculations, consistent with current best practices. A stormwater report is dated April 1, 2021 and was submitted to the Board in response to comments provided by BETA Group.

#### The Transportation Network

~~25.~~29. Primary automobile access to the Project will be from Massachusetts Avenue. Secondary access to Ryder Street will be exit only for automobiles.

~~26.~~30. The Project will provide one hundred ~~and thirty five (135)~~ twenty-eight (128) parking spaces, consisting of one hundred ~~and twenty six (126)~~ ten (110) garage parking spaces and ~~eighteen nine (918)~~ surface parking spaces. The Applicant has contracted with Workbar for the use of forty (40) parking spaces on weekdays, and ten (10) parking spaces overnight and weekends.

~~27.~~31. The Project will provide ~~one hundred fourteen (114)~~ bicycle parking spots, which will include upper level stacked spaces indoors, secured, and stacked.

#### Civil Engineering, Site Design, and Stormwater Impact

~~28.~~32. The Board engaged in review of potential civil engineering, site design, traffic, stormwater and floodplain impacts of the Project.

~~29.~~33. The Project will connect to the Arlington municipal water and sewer systems.

~~30.~~34. Approximately 93.6% of the site is currently covered by impervious surface. The Project will reduce the amount of the site covered by impervious surface to 77.5% of the Property. The Board finds that reduction in the total amount of impervious surface is a benefit to the Property.

~~35.~~ Stormwater management has been designed to be in compliance with the Mass Stormwater management standards in accordance with 310 CMR 10.05(6)(k)

~~through (q)~~ and defined in detail in the MassDEP Stormwater Management Handbook. The system incorporates best management practices (BMP's) to facilitate total suspended solids (TSS) removal; ~~infiltration and detention of stormwater flows~~ and provides a net reduction in post-development runoff peak rates and volumes.

#### General

~~31.~~36. The Project, as conditioned herein, will address the lack of affordable rental units in the Town.

~~32.~~37. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic (as defined in 760 CMR 56.02), the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.

~~33.~~38. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting waivers may have an adverse impact on Local Concerns.

~~34.~~39. The Board acknowledges concerns raised by abutters and other interested parties about the Project's potential incompatibility with ~~abutting~~ residential uses along Ryder Street and Beck Road, particularly relating to traffic and parking impacts. The Board has addressed these concerns by the imposition of appropriate conditions. The Board further finds that conditions detailed below appropriately address these matters of local concern in a manner that outweighs the regional need for affordable housing. The Board finds that the conditions imposed below address local and regional housing needs while properly protecting valid issues of local concern.

~~35.~~40. The Board finds that the construction of the Project, as conditioned, will be consistent with local needs.

### IV. CONDITIONS

#### A. **General**

A.1 The holder of this Comprehensive Permit is 1165R Mass MA Property, LLC. The Property is defined as the property located at 1165R Massachusetts Avenue, Arlington, Massachusetts, shown on a plan entitled "ALTA/NSPS Land Title Survey, 1165R Mass MA Property, LLC" prepared by Control Point Associates,

Inc. and dated July 16, 2020, with revisions through \_\_\_\_\_, February 8, 2021. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.

- A.2 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project (“Approved Plans”). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Director of Planning and Community Development who shall have the authority to approve such changes as immaterial changes. If the Director of Planning and Community Development determines that the proposed changes do not conform to the requirements of this Comprehensive Permit, they shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following plan set from Control Point Associates, Inc., and Bohler Engineering:

“ALTA/NSPS Land Title Survey, 1165R Mass MA Property, LLC” dated July 16, 2020, with revisions through February 8, \_\_\_\_\_, 2021, and consisting of the following sheets:

Sheet 1 of 4 “ALTA Survey (existing conditions plan~~”)”). The current site includes the WorkBar site prior to the subdivision intended by the Applicant.~~

Sheet 2 of 4 “ALTA Survey (flood zone plan)”

Sheet 3 of 4 “ALTA Survey (easement plan)”

Sheet 4 of 4 “ALTA Survey Notes”

“Proposed Site Plan Documents for Spaulding and Slye Investments, 1165-1167 Massachusetts Avenue” prepared by Bohler Engineering and dated June 15, 2020, with revisions through \_\_\_\_\_, 2021, as indicated below, and consisting of the following sheets:

C301 Site Layout Plan, revised June 11, 2021,

C401 Grading and Drainage Plan, revised May 26, 2021,

Architectural details contained in the plans entitled “Redevelopment of ~~1165~~1165R Massachusetts Avenue”, prepared by Bargmann, Hendrie and Archetype, Inc., and Title Sheet and dated June ~~18~~16, 2020, with revisions through \_\_\_\_\_, 2021, as noted below, and consisting of the following sheets:

Decision on Application for Comprehensive Permit  
 1165R Mass MA Property, LLC  
 1165R Massachusetts Avenue, Arlington, MA  
 \_\_\_\_\_, 2021

Page 10 of 36

A000	Title Sheet
L101	Landscape Plan
A001	3D Views
A002	Site Plan
A003	Overall Floor Plans
A004	Building #1, #3, #4 First Floor Plan
A005	Building #1, #3, #4 Second Floor Plan
A006	Building #1, #3, #4 Third Floor Plan
A007	Building #1, #3, #4 Fourth Floor Plan
A008	Building #4 Fifth and Sixth Floor Plan
A009	Building #4 Roof Plan
A010	Building #2 Floor Plans
A011	Typical Unit Plans
A012	Building #1, #4 Elevations
A013	Building #2 Elevations
A014	Building Sections & Building #3 Elevations

ZBA SECTION NO.	SHEET/DWG NO.	TITLE	DATE	REVISED FOR FINAL APPROVAL
3.2.7	A000	Title Sheet	June 18, 2020	April 6, 2021
3.2.7	L101	Landscape Plan	June 16, 2020	May 27, 2021
3.2.7	L102	Planting Plan	-	May 27, 2021
3.2.7	A001	3D Views	June 18, 2020	April 6, 2021
3.2.7	A002	Site Plan	June 16, 2020	April 6, 2021
3.2.7	A003	Overall Floor Plans	June 16, 2020	May 28, 2021
3.2.7	A004	Building #1, #3, #4 First Floor Plan	June 16, 2020	April 6, 2021
3.2.7	A005	Building #1, #4 Second Floor Plan	June 16, 2020	April 6, 2021
3.2.7	A006	Building #1, #4 Third Floor Plan	June 16, 2020	April 6, 2021
3.2.7	A007	Building #1, #4 Fourth Floor Plan	June 16, 2020	April 6, 2021
3.2.7	A008	Building #4 Fifth & Sixth Floor Plans	June 16, 2020	April 6, 2021
3.2.7	A009	Building #4 Roof Plan	June 16, 2020	April 6, 2021
3.2.7	A010	Building #2 Floor Plans	June 16, 2020	April 6, 2021
3.2.7	A011	Typical Unit Plans	June 16, 2020	April 6, 2021
3.2.7	A012	Building #1, #4 Elevations	June 16, 2020	April 6, 2021
3.2.7	A013	Building #2 Elevations	June 16, 2020	April 6, 2021
3.2.7	A014	Building Sections & Building #3 Elevations	June 16, 2020	April 6, 2021

Lighting details are contained in the plan entitled “Proposed Site Plan Documents for 1165R Mass MA Property, LLC” prepared by Bohler Engineering and dated October 5, 2020, with revisions through \_\_\_\_\_ May 26\_\_\_\_, 2021, and consisting of the following sheet:

C-701 Lighting Plan

Utility details are contained in the plan entitled “Proposed Site Plan Documents for 1165R Mass MA Property, LLC” prepared by Bohler Engineering and dated July 15, 2020, with revisions through \_\_\_\_\_, May 26, 2021, and consisting of the following sheet:

C-501 Utility Plan

A.2.1 -In addition to the above Civil Plans, the following shall be included as part of the Final Plans, submitted to the Board in a letter from Bohler Engineering, dated May 14, 2021, in response to BETA Engineering comments:

SHEET/ DWG NO.	TITLE	DATE
C-100	Cover Sheet	5/13/2021
C-101	General Notes Sheet	5/13/2021
C-201	Demolition Plan	5/13/2021
C-601	Soil Erosion & Sediment Control Plan	5/13/2021
C-602	Erosion and Sediment Control Notes and Details	5/13/2021
C-901	Detail Sheet	5/13/2021
C-902	Detail Sheet	5/13/2021
C-903	Detail Sheet	5/13/2021

A.2.2 In addition to the above-referenced plans, the following shall be included as part of the Final Plans submitted to the Arlington Conservation Commission and Board:

<u>SHEET/ DWG NO.</u>	<u>TITLE</u>	<u>DATE</u>
<u>EC-2</u>	<u>Pre-1946 Mill Complex Footprint Exhibit</u>	<u>8/7/2020</u>
<u>1</u>	<u>Existing AURA Exhibit</u>	<u>5/24/2021</u>
<u>1</u>	<u>Proposed AURA Exhibit</u>	<u>5/24/2021</u>
<u>1</u>	<u>Riverfront Exhibit</u>	<u>3/8/2021</u>
<u>2</u>	<u>AURA Exhibit</u>	<u>3/8/2021</u>

- A.3 The Applicant shall be a Limited Dividend Entity as required by Chapter 40B and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.4 The Project shall consist of not more than ~~one hundred and twenty-four (124)~~ ~~one hundred and thirty (130)~~ ~~twenty-four (130)~~ ~~124~~ rental apartment units, located in ~~three (3)~~ ~~four (4)~~ residential structures, and other related residential amenities, all as shown on the Approved Plans. The Project shall consist of no more than ~~one hundred and seventy-eight (178)~~ ~~one hundred and eighty-seven (187)~~ ~~seventy-eight (187)~~ ~~178~~ bedrooms.
- A.5 There shall be one hundred ~~and thirty-five (135)~~ ~~twenty-eight (135)~~ ~~128~~ vehicle parking spaces (inclusive of required handicap spaces).
- A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Arlington Zoning Bylaw and other local by-laws and regulations as specified therein. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of permit or inspection fees has been granted. **[Paul, there was a reduction in ConCom fees.]** Any subsequent revision to the Approved Plans, including but not limited to revisions in the Final Plans, referenced below, that requires additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).
- A.7 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Director of Planning and Community Development or other Town Departments, the Director of Planning and Community Development or applicable Department Head will use reasonable efforts to review and provide a written response within ~~thirty (30) days~~ ~~forty-five (45) days~~ following submission. For submissions that require assistance from an outside consultant, as determined by the Director of Planning and Community Development or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant. Should ~~thirty (30) days~~ ~~forty-five (45) days~~ elapse without a response as aforesaid, said plans or documents shall be deemed approved.



- A.8 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.
- A.9 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The applicable limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.10 The sidewalks, driveways, roads, utilities, drainage systems, and all other on-site infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, landscape maintenance, and hydrant maintenance. In this regard, the proposed site access ways within the Project shall not be dedicated to or accepted by the Town.
- A.11 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.

**B. Affordability**

- B.1 Except as may otherwise be allowed by the Subsidizing Agency MassHousing or other Subsidizing Agency, pursuant to the applicable subsidy program, a minimum of twenty-five percent (25%) or ~~thirty-one (31)~~ ~~thirty-three (33)~~ ~~one (1)~~ (31) units of the rental units shall be reserved for income-eligible households, meaning that they shall be rented to and occupied by households, as proposed by the Applicant, whose income (adjusted for household size) is not more than eighty percent (80%) of the Area Median Income ("AMI"), as determined by the United States Department of Housing and Urban Development ("HUD") and the Subsidizing Agency (the "Affordable Units"). Affordable Units shall, upon initial designation, be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency, except for fluctuations based on changes of household eligibility income allowed by the Regulatory Agreement. The Applicant shall be responsible for maintaining records sufficient to comply with the Subsidizing Agency guidelines for the location of Affordable Units in the Project and occupancy of such Affordable Units by income-eligible households. As will be set forth more fully in the Regulatory Agreement, the location of the affordable



units may change in the event that the income of a household occupying an affordable unit increases beyond allowable program limits. The Board acknowledges that affordable unit location is an issue within the exclusive jurisdiction of the Subsidizing Agency.

- B.2 All of the Project's Affordable Units shall be restricted for rental to households earning no more than the maximum allowable household income, adjusted for household size, as determined by MassHousing or any substitute Subsidizing Agency. The Affordable Units shall be maintained as affordable in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply with applicable zoning requirements without the benefit of this Comprehensive Permit.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan ("AFHMP") prior to the rental of any Affordable Units, and shall ensure that the Project complies with the Subsidizing Agency's Fair Housing requirements.
- B.4 For the initial rent-up of the Project, the maximum number of Affordable Units allowed by law and the applicable subsidy program, but not more than ~~seventy~~ fifty percent (~~70~~50%) of the Affordable Units, shall be reserved for households that qualify under a local preference definition which must be approved by the Subsidizing Agency prior to any marketing efforts as part of the AFHMP. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project's Monitoring Agent to effectuate this local preference, with an approved secondary lottery for all other Applicants. The Applicant shall assist the Department of Planning and Community Development in the submittal of any evidence required by the Subsidizing Agency to support this local preference requirement. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Department of Planning and Community Development in providing this evidence. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

**C. Submission Requirements**

- C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit (except as allowed by the Director of Planning and Community Development, as noted below), the Applicant shall:
- a. Deliver to the Board a check in a reasonable amount determined by the Director of Planning and Community Development to be used for staff to retain outside experts, if necessary, for technical reviews and inspections required under these conditions but at inception shall not exceed \$6,500 unless an alternate amount has been agreed upon by the Board and the Applicant. Said funds shall be deposited by the Board in an account pursuant to G. L. c. 44, § 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Provided, however, the additional funds required for the above-referenced technical reviews and inspections shall not exceed \_\_\_\_\_. Said funds may be used by the Board to hire civil engineering, traffic engineering, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.
  - b. Obtain and file a copy of a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the Stormwater Pollution Prevention Plan (SWPPP) submitted along with the NPDES filing.
  - c. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”), such approval to be that the plans conform to the requirements of this Comprehensive Permit and incorporate the relevant conditions herein. The Final Plans shall also incorporate all relevant conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record, the Professional (Civil) Engineer of record, and a Registered Landscape Architect. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans shall be submitted to the Board at thirty (30)

days least forty five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the “Final Site Plan Submission Date”). The plans should reflect changes to surface parking, proposed grading, stormwater systems, the stream channel cross section, erosion and sedimentation control (particularly around the relocated Ryder Brook), and other relevant site features.

- d. Submit to the Board for its administrative approval, a landscaping plan with the Final Plans, signed and sealed by a Registered Landscape Architect, depicting the following:
  - i. Overall planting plan that includes a demarcation of clearing and the limits of work;
  - ii. Planting plans for drives showing shade trees and lighting fixture locations;
  - ~~iii.~~ Planting plan for relocated Ryder Brook ~~Plans of walkways in open space and recreation areas, if any;~~
  - ~~iv.~~ Planting plan for areas along Mill Brook;
  - ~~iiiiv.~~ Plans of walkways in open space and recreation areas, if any;
  - ~~ivvi~~  
~~iv.~~ Prototype planting plans for each building;
  - ~~vvi.~~ Prototype screening plans for dumpsters, depicting plantings and fencing;
  - ~~viiviii.~~ Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;
  - ~~viiiix.~~ Tree protection and preservation plans
  - ~~viiix.~~ Construction fencing along abutting property lines; and
  - ~~ixxi.~~ Construction details.

All plantings shall consist of native, non-invasive, ~~drought-tolerant non-cultivar~~ species. Plantings installed along drives and walkways shall also be salt-tolerant. ~~Twelve (12) months after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening.~~ All plantings installed onsite shall be monitored for three years after completion of plantings. A survival rate of 80% must be achieved at the end of the third monitoring year. If 80% survival is not achieved then replacement plants shall be planted. The contract with the Management Company shall address ongoing maintenance of landscaping features.

- e. Submit to the Director of Planning and Community Development a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Director of Planning and Community Development, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Director of Planning and Community Development and other applicable staff has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Building Commissioner and/or Director of Planning and Community Development concerning the Final Site Plans within ~~thirty (30) days~~ thirty (30) days ~~forty-five (45) days~~ after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.

- f. The Applicant shall include on the Final Plans all of the various changes that have occurred during the hearing process. These plans should reflect site plan changes including but not limited to surface parking, proposed grading, stormwater systems, garage elevation, and other relevant site features.

- g. The Applicant shall submit a revised final Stormwater Report including Operations and Maintenance Plan documenting the various changes in the design that have occurred during the review process.

- f.h. The Final Plans shall show designated snow storage areas. -All designated snow areas shall be outside of wetland resource areas.

- g.i. The Applicant must provide notification to the Arlington Assessor's Office for address and unit numbering.

C.2 Prior to the issuance of any building permits, the Applicant shall:

- a. Record this Comprehensive Permit and the Subdivision Plan endorsed by the Board with the Middlesex South Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Board.
- b. Submit to the Board and the Director of Planning and Community Development evidence of Final Approval from the Subsidizing Agency (DHCD), as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board a copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of such Regulatory Agreement with DHCD shall be complete prior to the issuance of any building permit. It is understood and agreed that Monitoring provisions may be included with the Regulatory Agreement, in lieu of a separate Monitoring Services Agreement.
- d. Submit to the Building Commissioner final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts ("Architectural Plans"). The Architectural Plans shall be submitted in such form as the Building Commissioner may request pursuant to the State Building Code.
- e. An automatic sprinkler system conforming with NFPA 13 and a fire alarm system conforming to NFPA 72 shall be required in all residential buildings. Both systems shall be monitored by a UL approved central station monitoring service.
- f. Obtain and file with the Building Commissioner a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
- g. Obtain all necessary building, electrical, plumbing, and associated permits required to begin construction of the Project required by state law (it is understood that compliance with this requirement is part of the building permit process, rather than required prior to the issuance of building permits).
- h. The Applicant will be responsible for all applicable sewer permit, capacity impacts and privilege fees, as applicable. Notwithstanding anything contained herein, however the Applicant shall not be responsible to pay for inflow and infiltration fees.

- i. The Applicant will be responsible for all applicable water and sewer system fees as per officially promulgated fee schedules uniformly applicable to all other Town of Arlington projects. Notwithstanding anything contained herein, the Applicant shall not be responsible to pay for inflow and infiltration fees.
- j. ~~The Applicant shall perform additional test pits at the proposed stormwater basins to confirm groundwater elevations. These test pits shall be done during seasonal high groundwater conditions and shall be witnessed by the Town and/or its agent.~~ The Applicant shall provide to the Board a copy of the "Approval Not Required" plan endorsed by the building inspector. For purposes of the building inspector determining that the lot on which the Project will be constructed and used in granting the dimensional waivers in this approval, -the Board determines that the lot will conform to the dimensional criteria of the Zoning Bylaw.

**D. Construction Completion/Certificate of Occupancy**

D.1 Prior to issuance of a certificate of occupancy for any structure in the Project, the Applicant shall:

- a. Submit engineer's interim certification of compliance with utilities plan and profiles for such Phase (as applicable) to the Building Commissioner.
- b. Provide a letter to the Board, signed by the Applicant's ~~civil~~ engineer, certifying that the structure and supporting infrastructure has been constructed in compliance with the Final Plans in all material respects.
- c. Obtain acceptance from the Arlington Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the structure.
- d. Obtain a sewer connection sign-off from the Arlington Department of Public Works for the structure.

D.2 Prior to issuance of the certificate of occupancy for the Project, the Applicant shall:

- a. Submit to the Board, in digital file format and full-size paper copies, a final as-built plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in AutoCAD file delivery shall be in full model view and individual sheet views. The digital file

shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.

- b. The Applicant shall provide to the Board evidence of a property management plan (if property management will be done in-house), or shall provide a copy of a contract with a Management Company if property management will be conducted by a third-party. The Applicant shall submit to the Board all information relating to the issues of building security, public access, pet policy, staffing, trash removal, vegetation management, and smoking policies, and other issues addressed in the conditions herein.

## **E. Project Design and Construction**

- E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with representatives from the Arlington Fire Department, the Department of Public Works (Arlington Water and Sewer Division and Engineering Division), Planning and Community Development and other Town staff and consultants as may be determined. The Applicant and the site general contractor shall host a meeting open to all members of the public to review the construction schedule, hours, policies, procedures, and other neighborhood impacts at least fourteen (14) days prior to the start of construction.

- E.2 Prior to the pre-construction conference, the Applicant shall submit a Construction Management Plan ("CMP") for administrative approval by the Board. The CMP shall provide documentation of various construction related activities, including:

- 1. A Project Description and outline of primary construction tasks,
- 2. A Project Schedule including hours of operation, duration of primary construction tasks and estimated completion date,
- 3. Project logistics, including staging areas, truck routes, laydown areas, contractor parking, and construction traffic management,
- 4. Site Management including noise mitigation, dust control and security,
- 5. Public Safety and Coordination, including contact information and site inspections.



6. Coordination with the Town to provide advance email or website information regarding construction activities for public information.

- E.2 The Applicant shall permit representatives of the Board to observe and inspect the Property and construction progress until such time as the Project has been completed and the final occupancy permit issued.
- E.3 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations.
- E.4 All site retaining walls four (4) feet or greater in height, where indicated in the Approved Plans, shall be designed by a Massachusetts Professional Structural Engineer.
- E.5 During construction, the Applicant shall conform to all local, State, and Federal laws and provide advance notice to abutters per the Town's Residential Construction Control Agreement regarding noise, vibration, dust, and blocking of Town roads in order to accommodate delivery of materials to the site or for other construction staging purposes. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.
- E.6 Appropriate signage shall be shown on the Final Plans, consistent with the sign information shown on the Approved Plans. A temporary sign including the name and address of the project and contact information for the Applicant, general contractor, engineers, architect, and other relevant parties shall be posted on site for the duration of construction operations. The applicant shall work with the Arlington Open Space Committee and Arlington Historical Commission on the development of interpretive signage as per bh+a Landscape Plan dated June 16, 2020.
- E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.
- E.8 ~~The Applicant shall use electric heat and hot water for the Project, if reasonably available at the time of the submission of Final Plans.~~



- E.9 The Applicant shall install lighting on the site that conforms to the Town of Arlington's Zoning Bylaw and Town Bylaw. Lighting shall be down-lit/shielded to prevent light spillover onto surrounding properties and comply with dark sky requirements. Management of outdoor lighting shall be the responsibility of the Applicant.
- E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground, ~~as shown on the Approved Plans.~~ The contract with the Property Management Company shall note that no satellite dishes shall be allowed. The general contractor shall be responsible for coordinating all subsurface work with Dig Safe prior to the commencement of any excavation.
- E.11 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Building Commissioner as meeting design specifications, as applicable.
- E.12 ~~The Applicant shall test the soil during construction to confirm soil types in the areas of the infiltration system. Such testing shall be witnessed by the Board's designee. All unsuitable material, if any, discovered in excavation for the infiltration system shall be removed and disposed of in accordance with State and local regulations.~~
- E.13 Construction activities shall be conducted between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays, Sundays, or legal holidays. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; loading of construction dumpsters and erection of new structures. All off-site utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on the Property during construction.
- E.14 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. During construction, the site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.

- E.15 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- E.16 All dumpsters serving the Project shall be enclosed and covered (with the exception of construction dumpsters used during construction). The Board shall review the dumpster location as part of the approval of the Final Plans if different from what has been shown on the Approved Plans.
- E.17 All retaining walls visible from a public way or direct abutters, as determined by the Building Commissioner based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.
- E.18 Snow shall be stored within the areas of the Property designated on the Approved Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site. Snow may not be placed in or adjacent to resource areas.
- E.19 The Applicant shall comply with all applicable local, state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP's Noise Policy contained in DAQC Policy 90-001 as well as the Arlington Noise Abatement Bylaw contained at Title V, Section 12. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.
- E.20 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways and driveways providing access to both the residents of the Project and emergency vehicles. Neither snow nor sand may be placed in or adjacent to resource areas.
- E.21 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.

- E.22 The Applicant shall comply with DPW requirements regarding curb-cut permits.
- E.23 To the extent earth removal is necessary, the Applicant shall request that an earth removal plan be provided by the general contractor, prepare an earth removal plan, showing all necessary cuts and fills, and describing the appropriate number of truck trips necessary for the earth removal. A copy of the plan will be kept on file at the jobsite.
- E.-24 All catch-basins shall have oil/water separators as shown on the Approved Plans.
- E.-25 Project sidewalks and pathways/walkways shall be compliant with the requirements of the Americans with Disabilities Act (“ADA”) and the requirements of the Massachusetts Architectural Access Board (“AAB”).
- E.-27 This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for the issuance of Building Permits and Certificates of Occupancy by the Building Department under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals as published in the Town regulations or bylaws, including but not limited to building permits, inspections, water and sewer connections, and curb cuts, specifically excluding inflow and infiltration fees.
- E.28 Ryder Street shall not be used for construction deliveries between the hours of 7:30 AM to 8:30 AM and 3:00 PM to 4:00 PM on school days as provided in the letter from Krattenmaker, O’Conner & Ingber, PC to Christian Klein, Chairperson dated June 8, 2021.
- E.29 The Applicant shall perform a preconstruction and post construction survey of adjacent properties on Ryder Street and the Massachusetts Avenue right of way including photographs and/or video.
- E.30 ~~The Applicant shall monitor vibrations in the vicinity of the properties adjacent to Ryder Street throughout the course of construction. The location of vibration monitors shall be coordinated with the Board or its designee, in accordance with a plan submitted for approval.~~ The Applicant shall monitor vibrations in the vicinity of the properties adjacent to Ryder Street throughout the course of construction. The Applicant shall submit a plan/proposal for review by the Board for the monitoring of vibrations in the vicinity of the properties adjacent to Ryder Street.

E.31 The Applicant has submitted truck path diagrams to the Board showing turning paths for construction vehicles accessing the site. The diagrams were prepared by Bohler Engineering dated June 7, 2021. The truck paths shall be maintained free of stockpiles, stored equipment, debris and other construction materials to ensure adequate construction and emergency access. Truck paths shall include: the driveway off of Massachusetts Avenue ("Mass Ave."), the Quinn Road connector driveway (from Quinn Road between 1155R and Mirak Chevrolet to the Subject Site), Mass Ave. to Forest Street, Forest Street to Ryder Street and the driveway connector from Ryder Street into the Subject Site.

E.32 The Applicant shall hire a licensed Pest control company to conduct a comprehensive assessment of pest activity on the property and then develop and implement an Integrated Pest Management Plan for all phases of the project (before, during, and after construction).

#### **F. Traffic/Traffic Safety Conditions / Sidewalks**

F.1 Site access will be provided via Ryder Street to the west, an existing right of way from Massachusetts Avenue to the south, and Quinn Road (a ~~private~~public way) to the east. The Site will be signed directing vehicles to enter via the Massachusetts Avenue right of way or Quinn Road and exit via Ryder Street. or Quinn Road. Both the Ryder Street and Massachusetts Avenue ~~/Quinn Road~~ driveways will allow two-way travel for existing abutting uses. Bicycle users will be allowed to enter the site from Ryder Street.

F.2 The Applicant shall install all proposed traffic signs and pavement markings shown on the approved final plans. Signs and markings shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), latest edition and other applicable state or local requirements.

F.3 The proposed site provides 128 parking spaces in a combination of structured garage spaces and surface parking spaces, including eight (8) compact-sized parking spaces – six (6) spaces in Building 2 and two (2) spaces in Building 4. No changes to the number, configuration or designation of parking spaces shown on the final approved plans shall be made unless approved by the Board through a modification process.

- F.4 Turn restrictions shall be incorporated for vehicular traffic exiting the property at Ryder Street. These restrictions include prohibiting right turns onto Ryder Street except for bicycles. Parking restrictions for residents shall also be incorporated. To reinforce these restrictions, the Applicant shall:
- a. Provide a transportation package to all residents which shall include turn restrictions at Ryder Street, access/egress restrictions, no resident or guest parking on Ryder Street.
  - b. Have the on-site property ~~manger~~managermanagert promptly address any reported infractions with the resident including providing written warnings.
  - c. Advise residents who have repeated infractions and warnings that their lease will not be renewed once it terminates.
- F.6 Guest parking will be managed by the on-site property manager.- Guest parkers shall be required to register their vehicles with the property manager in advance and shall be assigned a designated parking space.
- F.7 Four (4) short term parking spaces shall be provided and maintained in the courtyard for taxis, rideshare vehicles, deliveries and visitors remaining for 1 hour or less.
- F.8 The Applicant shall ensure that emergency vehicles can adequately maneuver through the site. The Arlington Fire Department shall review the Final Plans to ensure compliance with this condition.
- F.9 The Applicant shall provide \_\_\_\_\_long114long-term bicycle parking spaces that are covered ~~and , and~~ secure ~~, and stacked~~.
- F.10 The Applicant shall provide \_\_\_\_\_22 outdoor short-term bicycle parking spaces. These spaces shall be near a location of public building access, such as the courtyard area.
- F.11 The Applicant shall provide new residents with transportation information packets with information on getting around Arlington sustainably.
- F.12 ~~The Applicant shall provide Transitscreen installation in the building lobby which depicts accurate real-time information for public transit, car sharing, and ride sharing services within one (1) mile of the site.~~

F.13 ~~With the exception of designated affordable housing units, P~~parking for units shall be subject to an additional monthly fee at market rates, separate from rent, in order to discourage motor vehicle ownership in the Project.

F.14 The Applicant shall provide electric vehicle charging stations at 5% of the parking spaces in the garage. The Applicant shall provide for the expansion of the number of charging stations in accordance with tenant demand insofar as the electrical service size allows without upgrade.

**G. Police, Fire, and Emergency Medical Conditions**

G.1 The Applicant shall provide professional property management and maintenance personnel on the premises during typical business hours and an emergency contact name and number for tenants and the Arlington Police Department and Fire Department.

G. 2 Stairwells and garages must be two-hour fire rated. Residential units must be one-hour fire rated.

G.3 The residential structures shall be fully sprinklered to NFPA regulations.

G.4 Compliance with all State Building Code and NFPA requirements relating to fire access and safety shall be met.

G.5 All elevators must have ~~emergency generator~~ backup emergency battery backup power as required by the Massachusetts State Building Code.

G.6 ~~The As shown on the Approved Plans, t~~The Project shall maintain fire access to all four sides of each residential structure at all times as shown on the approved plans.

G.7 The Project shall provide adequate external lighting to ensure safety of the residents of the Project. External lighting shall conform to the requirements of the local Regulation of Outdoor Lighting [Title V, Section 14].

G.8 ~~During construction, As proposed by the Applicant, the Project shall have a card access system with time stamps and shall have a superintendent on-site~~ during normal working hours to address security concerns with the Police Department.

- G.9 During times of construction, the Project, including all structures shall be accessible to Fire Department and other emergency vehicles. Additionally, all hydrants once installed and as practicable, shall be operational during construction in accordance with NFPA requirements. Standpipes once installed and as practicable shall be operational on each floor during construction, as required by the Building Code and the Fire Department.
- G.10 The Applicant shall consult with the Fire Department prior to the commencement of construction to provide an on-site emergency plan, which shall be updated as necessary throughout the construction process.

## **H. Water, Sewer and Utilities**

- H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project in accordance with the approved plans. The Approved Plans with the location of private water and sewer connections to public mains, size of pipes, conceptual layout of fire hydrants, etc. have been reviewed and approved by the Town of Arlington.
- H.2 All water and sewer infrastructure shall be installed in conformance with the Arlington Water and Sewer Division's technical requirements. The Applicant shall provide the Arlington Water and Sewer Division with calculations to ensure the distribution system for the area has the necessary capacity to meet system demand required prior to the commencement of construction.
- H.3 Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the Arlington Fire Department. If the Arlington Fire Department approves different hydrant locations, such modification shall be accepted administratively as an insubstantial change pursuant to 760 CMR 56.05(11).
- H.4 The service size for the domestic water service should be verified by the Arlington Water and Sewer Division and information on the fire service size and requirements should be verified by the Arlington Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Arlington Water and Sewer Division. The Applicant shall replace the existing water ~~main~~ service, hydrants and gate valves, as noted on the Approved Plans. Any connections to the Town water main shall be triple-gated and a tee connection.
- H.5 The water and sewer utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town requirements and protocols, except as may be waived herein.



- H.6 Utilities shall be installed ~~underground by the Applicant using methods standard to those installations, as shown on the approved plans.~~ Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like. The ~~Applicant shall request~~ Applicant in conjunction with the utility company(ies) ~~Utility Company(ies)~~ shall request a Grant of Location from the Select Board for any installation of new utility poles or underground conduit in the public right of way, as needed, ~~and shown on the Approved Plans.~~
- H.7 The Applicant shall be responsible for all trash and recycling removal from the Property. The Town of Arlington shall not have any responsibility for trash, recycling, compost, and/or yard waste pickup at the Property.
- H.8 Fire hydrants on the subject parcel Property shall remain private, and shall be maintained by the Applicant.
- H.9 The location of the existing utility pole within the right of way from Massachusetts Avenue has been noted as a safety concern by the Board and the public. The Applicant has indicated that the existing utility pole cannot be relocated due to various constraints. The Applicant has stated that they have worked with the utility owner and adjacent property owner but have not come to a feasible resolution. The Applicant should continue to work to resolve this issue including further exploration of relocating the pole further east but within the right of way. Prior to initiating construction, the Applicant shall provide the Board with a written summary of the coordination efforts between the Applicant and the utility owner regarding the relocation of the pole. If it is finally determined that the pole cannot not be relocated, the Applicant, prior to construction, shall provide the Board with a plan for mitigating safety and visibility issues related to the pole.

#### **I. Wetlands/Floodplain/Environmental Conditions**

- I.1 Prior to the commencement of construction, erosion control measures shall be installed consistent with the Approved Plans.
- I.2 ~~No uncovered stockpiling of materials shall be permitted within the 100 foot Wetland Buffer Zone or Adjacent Upland Resource Areas ("AURA") or other resource areas.~~
- I.3 ~~No dumpsters shall be allowed within the AURA or other Resource Areas.~~
- I.4 ~~No heavy equipment may be stored within the AURA or other Resource Area.~~



I.5 During construction, ~~a~~Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily.

I.6 Any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain, or adjacent property. Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin.

~~I.67I.6~~ Prior to commencement of construction, the Applicant must hire a qualified environmental monitor with professional credentials to be selected by the Board and to be on-site throughout the duration of the project. This period shall begin when siltation controls are installed and shall end with issuance of a Certificate of Compliance. The monitor shall submit an electronic report to the ZBA weekly regarding construction progress, relation to resource areas, and shall state whether such work is in their professional opinion in compliance with the comprehensive permit. During the duration of the project, the qualified environmental monitor shall also submit an electronic report after every rain event exceeding 0.5 inches of rain in a 24-hour period to the ZBA regarding the condition of the site during and after the rain event, as well as the status of erosion controls and any additional measures to address stormwater management issues caused by said rain event. The ZBA reserves the right to change the frequency of inspections based on contractor performance, weather, or site conditions. All materials required to be submitted to the ZBA shall also be submitted to the Environmental Monitor.

I.78 The Applicant must hire a professional engineer to oversee the installation of the stormwater management system. A stormwater mitigation report must be submitted to the ZBA within 10 days of the completion of the stormwater management system. The stormwater report shall include as-built plans, photographs from installation, and a written summary of the installation of the stormwater management system and stormwater best management practices (e.g., porous pavement and other stormwater features, as applicable).

I.9 The Applicant shall submit the contact information of the party responsible for monitoring and maintaining the planted vegetation within stream relocation areas to the ZBA. Should any changes be made to this party, the ZBA shall be notified. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

~~I.810I.8~~ To avoid adding excess nitrogen runoff, the Applicant shall only treat the planted areas within resource areas with slow release nitrogen fertilizer. Application of this fertilizer cannot occur in the summer, or after storm events. Lawn fertilizer shall only be applied twice a year, in spring and fall. The

application of plant nutrients shall otherwise comply with 330 CMR 31.00. No other herbicides or treatment methods are approved. No pesticides or rodenticides shall be used to treat pest management issues within Resource Areas. These shall be continuing conditions in perpetuity that survives the expiration of this permit.

- | I.911 Pervious surfaces shown on the project plans shall be maintained as specified in the stormwater report and logs/reports shall be maintained by the Applicant. Pervious surfaces shown on the project plans shall not be replaced by impervious surfaces. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- | I.4012 No snow storage is permitted within the AURA or other Resource Areas. A snow storage plan shall be submitted to the ZBA prior to construction completion. If these areas are insufficient for storage during the snow season, snow shall be removed from the site. Sediments and debris shall be removed from snow storage areas in the early spring. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- | I.4413 The Applicant shall protect all adjacent catch basins using silt socks during construction.
- | I.4214 The Applicant shall conduct catch basin sump cleanings at the end of the project work period.
- | I.4315 ~~The Applicant shall submit copies of the SWPPP inspection reports to the ZBA within 10 days of the date of each report.~~
- | I.4416 ~~The Applicant shall submit for review and approval by the ZBA an invasive management plan for work in the AURA and other Resource Areas outlining all locations for invasive management, the species and quantities of invasive plants to be managed, and the method of management.~~
- | I.4517 All mitigation plantings and all plantings within resource areas shall be native and be installed and maintained according to the standards of the American Association of Nurserymen (AAN). ~~No cultivars of native plantings shall be allowed.~~ This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- | I.4618 All plantings planted and invasive species removed through this project in Resource Areas or as mitigation shall be monitored for three years. A monitoring report shall be submitted to the ~~Board or its designee~~ Conservation Commission annually in June for the three year monitoring period, reporting on the health of the new plantings and the success of the invasive plant management. The annual

report shall identify any plantings that did not survive and summarize the replacement of the plantings. A survival rate of 80% must be achieved at the end of the third monitoring year. If there is less than a 80% survival rate of the plantings after the third year, the Applicant must submit recommendations for replacements to the ZBA for approval.

I. ~~17~~19 The Applicant shall protect all area trees per the Town Wetlands Protection Regulations, Section 24 Vegetation Removal and Replacement, protecting trees through securing (not nailing) 2x4 boards, between 6-8 feet in length, around tree base. The boards shall be installed vertically such that one end is installed directly into the ground. Alternative protection measures must be approved by the ZBA.

I.20 The Notice of Intent filed under the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and its Regulations (310 CMR 10.00) shall also include a detailed evaluation addressing all requirements under the Application for Vegetation Removal in accordance with Section 24 – Vegetation, E (1) through E (7) of the Arlington Wetlands Protection Bylaw. This should include the elements described in the guidance provided in Section 24 E as follows:

- a. Narrative describing existing conditions, proposed plantings, list of existing and proposed species, size of existing species and proposed species, quantity plants before and after revegetation and the rational the removal and maintenance plan.
- b. Affirmation of the Revegetation Activities: All plans must be accompanied by written testimony and scale diagram from a certified arborist or wetland scientist or landscape architect. The document must include at a minimum the necessity of vegetation removal, surface area to be removed, quantity of individual plants by species.
- c. Planting Plan: Drawn to scale, properly identified resource area and buffer zone and the project site, location of replacement species, comply with (AAN), erosion controls, estimated tree canopies after 15 years of growth, name, sizes and locations of trees to be planted, and total area of SF of the area shaded by the canopies.
- d. Existing species list
- e. Replacement species list
- f. Rational for Removal
- g. Maintenance Plan

I. ~~18~~2118 The Land Under the relocated Brook (Land Under Water Bodies) as noted on the Approved Plans shall be protected in perpetuity: through a recorded deed restriction, as indicated on the Approved Plans. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

I.1922 The Bank of the relocated Brook as noted on the Approved Plans shall be protected in perpetuity through a recorded deed restriction, as indicated on the Approved Plans. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

I.23 Work associated with re-routing the Ryder Brook channel shall be completed during Phase 1 of the Construction Phasing Plan20 All mitigation, as it pertains to ensure flow through the Site will be uninterrupted during construction. Within Phase 1, the following work associated with re-routing shall be completed:  
a. Grading the proposed Ryder Brook channel.  
b. Stabilizing the Ryder Brook substrate with the approved stone/substrate material  
c. Stabilizing the Banks and adjacent areas with seed.

I.24 River stone and broken stone to be used as the substrate for Ryder Brook shall consist of washed material and shall be free from overburden, spoil, shale and organic material to protect water quality.

I.25 Erosion controls shall be installed upgradient the Banks of the relocated Ryder Brook once the channel has been graded and stabilized.

I.2026 All mitigation, as proposed as part of this project shall remain in perpetuity, as indicated on the Approved Plans. The approved planting areas, invasive removal areas, the water quality units, and the stormwater system shall remain in perpetuity and if replacement is necessary, such replacement shall be subject to the approval of the Commission. - This shall be a continuing condition in perpetuity that survives the expiration of this permit.

## J. Other General Conditions

J.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later, as per 760 CMR 56.05(12)(a). In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time construction authorized by the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.

- J.2 The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments, in accordance with applicable building and fire codes and standards unless specifically waived herein or as otherwise addressed in these conditions.
- J.3 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.
- J.4 This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction. Overnight parking of vehicles on public ways is prohibited in the Town of Arlington.
- J.5 In the event that the Applicant (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, within fourteen (14) days of notification by the Town to the Applicant/Management Company, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town opts to perform such maintenance in accordance with this paragraph, the Applicant shall reimburse the Town within forty-five (45) days for all of its reasonable expenses related to such work.
- J.6 The Project entrance way and interior roads, and drainage systems associated therewith shall remain private, and the Town shall not have any legal responsibility for the operation and maintenance of such. The Town shall also have no obligations relating to the proposed recreational areas on the Property, the construction and operation of which shall be the sole responsibility of the Applicant. ~~The Applicant is required to maintain the sidewalk along Dorothy Road clear of snow per local ordinance.~~
- J.7 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) enforcement by the Zoning Enforcement Officer pursuant to G. L. c. 40A, § 7; (b) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (c) take such other action at law or in equity

as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

### **DECISION**

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of one hundred ~~and twenty-four~~ (124) ~~thirty~~ (130) ~~twenty-four~~ (130) 124 rental apartment units pursuant to Chapter 40B, §§ 20-23, for the development described above.

### **RECORD OF VOTE**

The Board of Appeals voted \_\_\_\_\_, at its public meeting on \_\_\_\_\_, 2021, to grant a Comprehensive Permit subject to the above-stated Conditions, with this Decision as attested by the signatures below.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_, 2021

Decision on Application for Comprehensive Permit  
1165R Mass MA Property, LLC  
1165R Massachusetts Avenue, Arlington, MA  
\_\_\_\_\_, 2021  
Page 36 of 36

Filed with the Town Clerk on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Town Clerk

**Notice:** Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Groveland, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.



Mary,

I was doing a final review of the documents noted in the draft decision, and I had a few questions where the documents had possible conflicts or where the documents appeared to conflict with some terms in the draft decision.

- There are a couple of references to a future subdivision. Is that a part of the comprehensive permit application?
- In the tabulation of spaces, what is "unusable open space"?
- In the Nitsch Trip Generation Assignment Plan (Figure 8), what do negative numbers mean?
- Sheet L102 references sheet L103 which does not appear to be included in the set.
- There is snow storage indicated near the headwall for Ryder Brook. That appears to be proximate to a wetland resource, which is prohibited in the decision. Do you know if this was discussed with the Conservation Commission?
- Is there any long or short term bike parking at Building #2?
- Sheet C-201 indicates the pole in the Mass Ave ROW is to be removed. It is indicated as existing elsewhere in the set.
- Is the water from the Building #2 roof and roadway leading to the garage restrained and treated on site?
- The tree protection detail on sheet C-602 differs from the requirements in the draft decision.
- Are there proposed locations for "Stabilized Construction Exits"? There is a detail, but I don't see call-outs on the plans.
- Is there any proposed lighting along the Mass Ave ROW? There is none currently.

Sorry for bringing these up so late. Most of this is just clarification.

Best,

Christian Klein  
Chair, Arlington ZBA  
cklein@town.arlington.ma.us

Dear Christian,

Here are the answers to your questions:

1. Future subdivision: No it is not part of the comprehensive permit application. My client has prepared the necessary ALTA survey to submit to the building inspector for the approval not required. The subdivision will separate the WorkBar parcel and the 40B parcel. We will be submitting to the ZBA in another proceeding a shared parking agreement for approval.
2. What is the amount of “unusable open space”? I will obtain this information and provide it.
3. What do the negative numbers mean in the Nitsch Trip generation assignment plan (Figure 8):According to the project traffic engineer, the negative numbers represent a reduction in net trip generation due to the change in use and access management. For example, all site-generated egress trips at the Mass Ave driveway are shown to be negative because the previous office use and Workbar were allowed to exit via that driveway. However, site trips are now restricted to exit from there so that the driveway will experience a reduction in egress traffic volume.
4. Sheet L103 I am told was included in the plan set. I will have my assistant send a copy of it via email.
5. Snow storage-Snow storage areas will be coordinated with the Conservation Commission during the NOI process.
6. There are 2 outdoor bike racks at building 2 with a capacity for 4 bikes.
7. The existing pole in the Mass Ave ROW is to remain as shown on the latest civil site plans submitted to the Board and dated May 26, 2021.

8. Runoff from the Building 2 roof and driveway between Building 2 and the adjacent garage will be directed through crushed stone trenches to a vegetated depression for water quality treatment, as requested and reviewed by BETA.
9. The tree protection detail will be revised on future plans to reflect the conditions in the decision.
10. No stabilized construction entrances/exits are currently shown on the plans. However, these will be added to future plans as part of the Construction Management Plan.
11. No new lighting is proposed along the Mass Ave ROW.

I thank you.

Mary Winstanley O'Connor, Esq.  
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## TOWN OF ARLINGTON

### Zoning Board of Appeals

730 Massachusetts Avenue  
Arlington, MA 02476

#### DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT

##### G.L. c. 40B, §§ 20-23

APPLICANT: 1165 R Mass MA Property, LLC (“Applicant”)

PROPERTY: 1165-1167 and 1165R Massachusetts Avenue, Arlington, MA (the “Property”)

ASSESSORS’ MAP: Assessors Parcel 57-2-10.B

DEVELOPMENT NAME: \_\_\_\_\_

DATE: July \_\_, 2021

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**Comment [PH1]:** I don’t see this entity in the Secretary of State’s Corporate Database. It is a Delaware Corporation, but it should be registered in MA.

#### I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was received by the Town of Arlington Zoning Board of Appeals (“Board”) on or about December 1, 2020 (“Application”). The Application proposes the development of one hundred and thirty (130) units of rental housing with associated parking in four (4) structures located at the Property (the “Project”).
2. The Board’s public hearing on the Application was duly opened on January 5, 2020, with the grant of an extension by the Applicant of the thirty (30) day deadline to open the public hearing. At its January 5, 2021 public hearing, the Board voted not to provide a notification to the Applicant pursuant to 760 CMR 56.03(8) that it met the 1.5% Land Area Minimum Safe Harbor.
3. The Project is located on the Property, which is located at 1165-1167 and 1165R Massachusetts Avenue, Arlington, Massachusetts. The Property is located on approximately 2.3 acres of land.
4. The Property is located in the Industrial (I) Zoning District. Nearby uses consist of Mirak Chevrolet parking lot to the north (at 1125 Massachusetts Avenue), and Lalicata Landscaping’s yard to the north (at 33 Ryder Street). To the south, the Property abuts the Mirak Hyundai car dealership (at 1165 Massachusetts Avenue). To the east, the Property abuts the Mirak Chevrolet parking lot as well as

**Comment [KL2]:** the original application was for 130 units, but the current total is 124. Does the original or the final number of units need to be shown here?

Arlington Auto Detailing (1155R Massachusetts Avenue). To the west, the Property abuts the Robert J. Annese Law Office (1171 Massachusetts Avenue) and a condominium complex (located at 9 Ryder Street).

5. The Property consists of approximately 2.3 +/- acres. The Property currently contains ~~—1—three~~ existing structures on footprints comprising 25.7% of the Property. Additionally, the Property contains significant pavement, covering approximately 67.9% of the Property, for a current total impervious area of 93.6%.
6. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application.
7. The Applicant proposes the construction of one hundred and ~~thirty (130)~~ twenty-four (124+30124) rental apartment units, of which thirty ~~three (33)~~ one (331) units will be reserved as affordable units as determined by the Subsidizing Agency.
8. During the public hearing, the Applicant was assisted primarily by its counsel May O'Connor, Esq., of Krattenmaker, O'Connor & Ingber, P.C., its civil engineers Bryan Zimolka, P.E. and Randy Miron, P.E., of Bohler Engineering, its architect Joel Bargmann, AIA, of BH+A Architects, and its traffic engineer Bryan Simolka, P.E., of Nitsch Engineering.
9. The Board utilized the services of its review engineers BETA Group, Inc., with Marta Nover, - Laura Krause, Senior Environmental Scientist, Senior Associate William McGrath, P.E. handling civil engineering and wetlands peer review, and Greg Lucas, P.E., PTOE, for traffic. The Board also utilized the services of Town Counsel Douglas Heim, Esq., Planning Director Jenny of Planning and Community Development Jennifer Raitt, Senior Planner Kelly Lynema, Environmental Planner and Conservation Agent Emily Sullivan, and other town staff. The Board was also represented during the course of the hearing by Paul Haverty, Esq., of Blatman, Bobrowski & Haverty, LLC as its Chapter 40B technical consultant through a grant from the Massachusetts Housing Partnership.
10. During the public hearing, there was significant public input. The Board heard input from abutters and other interested persons throughout the hearing process. The Board also heard significant input from town departments, including the Conservation Commission, the Department of Planning and Community Development, and the Transportation Advisory Committee.

**Comment [KL3]:** per property card:  
[https://s3.amazonaws.com/documents.arlingtonma/patriot\\_propertycards/For2021/004875\\_01\\_2021.PDF](https://s3.amazonaws.com/documents.arlingtonma/patriot_propertycards/For2021/004875_01_2021.PDF)

## II. JURISDICTIONAL FINDINGS

11. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
- a. The Applicant is a limited liability company, and has indicated in its application that it will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 1 Office Square, Floor 26, Boston, MA 02109.
  - b. The Applicant has received a written determination of Project Eligibility from MassHousing dated November 17, 2020 under the New England Fund Program, a copy of which was provided to the Board with the original application.
  - c. The Applicant provided a copy of a letter from Julia Mirak Kew to Jessica Malcolm of MassHousing stating that a joint venture agreement forming the Applicant gives it authority to seek a comprehensive permit for the Property. The Subsidizing Agency determined that the Applicant has site control to pursue a comprehensive permit. Pursuant to 760 CMR 56.04(6), this determination is conclusive as to the issue of site control.
  - d. The Applicant has agreed to execute a Regulatory Agreement that limits its annual distributions in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by DHCD.
12. The Town of Arlington (“Town”) did not meet the statutory minima set forth in G. L. c. 40B, § 20 or 760 CMR 56.03(3) to 56.03(7) at the time the original application was filed, except as noted below:
- a. At the time of the filing of the Application, the number of low or moderate income housing units in the Town constituted 5.7% of the total year-round housing units in the Town, based on the most recent publicly available copy of the DHCD Subsidized Housing Inventory, dated December 21, 2020. Thus, the Town does not meet the ten percent (10%) statutory minimum.
  - b. In another pending comprehensive permit application, the Board has asserted a claim that there are existing affordable housing units that are on

**Comment [PH4]:** I’m not sure if this is the correct address for the LLC, since it is not registered in MA.

sites that comprise more than one and one half percent (1.5%) of the total land area of the Town that is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts, or any political subdivision thereof). The Board timely asserted this claim pursuant to 760 CMR 56.03(8). The Applicant appealed this claim to the Department of Housing and Community Development, which issued a decision dated November 17, 2016, reversing the Board's Safe Harbor determination. The Board appealed this decision to the Housing Appeals Committee. On October 15, 2019, the Housing Appeals Committee upheld the decision of the Department of Housing and Community Development. Without waiving its rights ~~rights~~ on the other pending application, the Board has chosen not to assert a 1.5% claim in this matter.

- c. The granting of this Comprehensive Permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
- d. The Town has an approved Housing Production Plan pursuant to 760 CMR 56.03(4), but is not currently within (or eligible for) certification.
- e. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).
- f. The Project as originally submitted does not constitute a Large Project pursuant to 760 CMR 56.03(6).
- g. The Applicant's Comprehensive Permit Application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

### III. FACTUAL FINDINGS

#### Location of Project

- 13. The Project is located on a previously developed 2.3 acre parcel of land located off Massachusetts Avenue in close proximity to Ryder Street. Mill Brook and Ryder Brook flow~~s~~ through the Property. The Property is located within the Industrial (I) Zoning District.



14. In addition to being located next to various commercial uses, the Project also abuts a residential condominium complex at 9 Ryder Street.

Wetlands

15. The Applicant proposes the relocation of Ryder Brook, an intermittent stream that is not jurisdictional as a stream under the Wetlands Protection Act, but which is jurisdictional as an intermittent stream under the Arlington Wetlands Bylaw and Regulations.
16. The Property contains several additional resource areas under both the Wetlands Protection Act and/or the Arlington Wetlands Bylaw and Regulations. These resource areas include:
- Bank to Mill Brook (Perennial Stream)
  - Bank to Ryder Brook (Intermittent Stream, local bylaw)
  - Land Under Waterbodies – Mill Brook
  - Land Under Waterbodies – Ryder Brook (local bylaw only)
  - Bordering Land Subject to Flooding associated with Mill Brook
  - 200-foot Riverfront Area – Mill Brook
  - 100-foot Adjacent Upland Resource Area – Mill Brook (local bylaw only)
  - 100-foot Adjacent Upland Resource Areas – Ryder Brook (local bylaw only)
  - 100-foot Buffer Zone to on-site Areas Subject to Protection (WPA and local bylaw)

17. The Project, as proposed, does not require any impacts to the FEMA Floodway or 100-Year FEMA Floodplain.

- ~~17.~~18. The Arlington Conservation Commission provided a determination that a significant portion of the Property is exempt from the riverfront standards (under both the WPA and local bylaw) due to the Historic Mill Complex exemption, as set forth on the plan entitled “Pre-1946 Mill Complex Footprint Exhibit” prepared by Bohler Engineering and dated August 7, 2020, revised September 21, 2020.

- ~~18.~~19. The Project will be required to obtain an Order of Conditions from the Arlington Conservation Commission pursuant to the Wetlands Protection Act.

- ~~19.~~20. The Property currently contains 4,135 square feet of pervious surface within the AURA. The Project, by the elimination of existing impervious surfaces, will increase the pervious area within the AURA to 11,450 square feet, an increase in pervious area of 7,315 square feet. This increase in pervious area within the AURA is a net benefit to the wetlands.

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- ~~21.~~ The Property currently contains 3,416 square feet of pervious area within the 200-foot riverfront area. The Project is proposed to increase the pervious area within the 200-foot riverfront area to 8,758 square feet, an increase of 5,342 square feet. This increase in pervious area results in a net benefit to the riverfront area.
- ~~22.~~ The Project is in compliance with ,as proposed, complies to Section 25E of the Arlington Regulations for Wetlands Protection because the plan will result in a decrease in total impervious surface within the first 50 feet of the AURA, which is considered an enhancement of the resource area.
- ~~23.~~ The Project is in compliance with ,as proposed, complies to Section 25F (1 and 2) of the Arlington Regulations for Wetlands Protection because the Project results in a decrease in total impervious surface within the AURA and there will be an enhancement of the Resource Area values. In addition, the Project significantly decreases the total impervious area onsite, and plantings are proposed throughout the development.
- ~~20,24.~~ The proposed plan for relocating Ryder Brook provides enhanced resource area functions to the site, including habitat value, pollution prevention, storm damage prevention, and flood control. The existing Ryder Brook is approximately 120 linear feet long, and the proposed relocated Ryder Brook is approximately 200 linear feet long. The existing Ryder Brook has approximately 250 linear feet of Bank and 816 square feet of Land Under Water. The proposed relocated Ryder Brook has approximately 363 linear feet of Bank and 1880 square feet of Land Under Water. Ryder Brook currently contains mostly non-native plants. The proposed planting plan for Ryder Brook contains all native plants and coir fascine for natural erosion control and bank stabilization.
- ~~21,25.~~ The Project is in compliance with Section 25D of the Arlington Regulations for Wetlands Protection because the Project proposes mitigation to increase the pervious area within the 0'-25' AURA, which is considered an enhancement of the resource area.
- ~~22,26.~~ The Applicant submitted an alternatives analysis prepared by Bohler Engineering, in compliance with Section 25C of the Arlington Regulations for Wetlands Protection.
- ~~23,27.~~ The Project will provide vegetative mitigation and resource area improvements, including improvements to habitat value, pollution prevention, storm damage prevention, and flood control along the relocated Ryder Brook and Mill Brook, all in compliance with Section 4(b) of the Arlington Regulations for Wetlands Protection.

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24.28. The Applicant utilized NOAA 14+ data for the stormwater management calculations, consistent with current best practices.

#### The Transportation Network

25.29. Primary automobile access to the Project will be from Massachusetts Avenue. Secondary access to Ryder Street will be exit only for automobiles.

26.30. The Project will provide one hundred and thirty-five (135) parking spaces, consisting of one hundred and twenty-six (126) garage parking spaces and nine (9) surface parking spaces. The Applicant has contracted with Workbar for the use of forty (40) parking spaces on weekdays, and ten (10) parking spaces overnight and weekends.

27.31. The Project will provide \_\_\_\_ bicycle parking spots.

#### Civil Engineering, Site Design, and Stormwater Impact

28.32. The Board engaged in review of potential civil engineering, site design, traffic, stormwater and floodplain impacts of the Project.

29.33. The Project will connect to the Arlington municipal water and sewer systems.

30.34. Approximately 93.6% of the site is currently covered by impervious surface. The Project will reduce the amount of the site covered by impervious surface to 77.5% of the Property. The Board finds that reduction in the total amount of impervious surface is a benefit to the Property.

35. Stormwater management has been designed to be in compliance with the Mass Stormwater management standards in accordance with 310 CMR 10.05(6)(k) through (q) and defined in detail in the MassDEP Stormwater Management Handbook. The system incorporates best management practices (BMP's) to facilitate total suspended solids (TSS) removal, infiltration and detention of stormwater flows.

#### General

34.36. The Project, as conditioned herein, will address the lack of affordable rental units in the Town.

32.37. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. The Board finds that such

**Comment [DA5]:** Should there be any mention of the proximity to the Bikeway, or not because it doesn't directly about it?

**Comment [KL6]:** I'm confused about parking. The waiver indicates there will be 128 parking spaces, however the site plans show 97 in building 4, 13 in building 2, and 11 surface spaces (121 total)

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conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic (as defined in 760 CMR 56.02), the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.

~~33.~~38. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting waivers may have an adverse impact on Local Concerns.

~~34.~~39. The Board acknowledges concerns raised by abutters and other interested parties about the Project's potential incompatibility with ~~abutting~~ residential uses along Ryder Street and Beck Road, particularly relating to traffic and parking impacts. The Board has addressed these concerns by the imposition of appropriate conditions. The Board further finds that conditions detailed below appropriately address these matters of local concern in a manner that outweighs the regional need for affordable housing. The Board finds that the conditions imposed below address local and regional housing needs while properly protecting valid issues of local concern.

~~35.~~40. The Board finds that the construction of the Project, as conditioned, will be consistent with local needs.

#### IV. CONDITIONS

##### A. **General**

- A.1 The holder of this Comprehensive Permit is 1165R Mass MA Property, LLC. The Property is defined as the property located at 1165R Massachusetts Avenue, Arlington, Massachusetts, shown on a plan entitled "ALTA/NSPS Land Title Survey, 1165R Mass MA Property, LLC" prepared by Control Point Associates, Inc. and dated July 16, 2020, with revisions through \_\_\_\_\_, 2021. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.
- A.2 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Director of Planning and Community Development who shall have the authority to approve such changes

Decision on Application for Comprehensive Permit  
1165R Mass MA Property, LLC  
1165R Massachusetts Avenue, Arlington, MA  
\_\_\_\_\_, 2021  
Page 9 of 34

as immaterial changes. If the Director of Planning and Community Development determines that the proposed changes do not conform to the requirements of this Comprehensive Permit, they shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following plan set from Control Point Associates, Inc., and Bohler Engineering:

“ALTA/NSPS Land Title Survey, 1165R Mass MA Property, LLC” dated July 16, 2020, with revisions through \_\_\_\_\_, 2021, and consisting of the following sheets:

Sheet 1 of 4 “ALTA Survey (existing conditions plan)”  
Sheet 2 of 4 “ALTA Survey (flood zone plan)”  
Sheet 3 of 4 “ALTA Survey (easement plan)”  
Sheet 4 of 4 “ALTA Survey Notes”

“Proposed Site Plan Documents for Spaulding and Slye Investments, 1165-1167 Massachusetts Avenue” prepared by Bohler Engineering and dated June 15, 2020, with revisions through \_\_\_\_\_, 2021, and consisting of the following sheets:

C301 Site Layout Plan  
C401 Grading and Drainage Plan

Architectural details contained in the plans entitled “Redevelopment of 1165\$ Massachusetts Avenue”, prepared by Bargmann, Hendrie and Archetype, Inc., and dated June 16, 2020, with revisions through \_\_\_\_\_, 2021, and consisting of the following sheets:

A000 Title Sheet  
L101 Landscape Plan  
A001 3D Views  
A002 Site Plan  
A003 Overall Floor Plans  
A004 Building #1, #3, #4 First Floor Plan  
A005 Building #1, #3, #4 Second Floor Plan  
A006 Building #1, #3, #4 Third Floor Plan  
A007 Building #1, #3, #4 Fourth Floor Plan  
A008 Building #4 Fifth and Sixth Floor Plan  
A009 Building #4 Roof Plan  
A010 Building # 2 Floor Plans  
A011 Typical Unit Plans  
A012 Building #1, #4 Elevations

- A013 Building #2 Elevations  
A014 Building Sections & Building #3 Elevations

Lighting details are contained in the plan entitled “Proposed Site Plan Documents for 1165R Mass MA Property, LLC” prepared by Bohler Engineering and dated October 5, 2020, with revisions through \_\_\_\_\_, 2021, and consisting of the following sheet:

- C-701 Lighting Plan

Utility details are contained in the plan entitled “Proposed Site Plan Documents for 1165R Mass MA Property, LLC” prepared by Bohler Engineering and dated July 15, 2020, with revisions through \_\_\_\_\_, 2021, and consisting of the following sheet:

- C-501 Utility Plan

- A.3 The Applicant shall be a Limited Dividend Entity as required by Chapter 40B and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.4 The Project shall consist of not more than one hundred and ~~thirty (130)~~twenty-four (130) 124 rental apartment units, located in four (4) residential structures, and other related residential amenities, all as shown on the Approved Plans. The Project shall consist of no more than one hundred and ~~eighty-seven (187)~~seventy-eight (187) 178 bedrooms.
- A.5 There shall be one hundred and thirty-five (135) vehicle parking spaces (inclusive of required handicap spaces).
- A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Arlington Zoning Bylaw and other local by-laws and regulations as specified therein. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of permit or inspection fees has been granted. Any subsequent revision to the Approved Plans, including but not limited to revisions in the Final Plans, referenced below, that requires additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).

Comment [KL7]: need correct, verified number

- A.7 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Director of Planning and Community Development or other Town Departments, the Director of Planning and Community Development or applicable Department Head will use reasonable efforts to review and provide a written response within forty-five (45) days following submission. For submissions that require assistance from an outside consultant, as determined by the Director of Planning and Community Development or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant. Should forty-five (45) days elapse without a response as aforesaid, said plans or documents shall be deemed approved.
- A.8 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.
- A.9 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The applicable limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.10 The sidewalks, driveways, roads, utilities, drainage systems, and all other on-site infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, landscape maintenance, and hydrant maintenance. In this regard, the proposed site access ways within the Project shall not be dedicated to or accepted by the Town.
- A.11 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.

**B. Affordability**



- B.1 Except as may otherwise be allowed by the Subsidizing Agency MassHousing or other Subsidizing Agency, pursuant to the applicable subsidy program, a minimum of twenty-five percent (25%) or thirty-~~three (33)~~one (31) units of the rental units shall be reserved for income-eligible households, meaning that they shall be rented to and occupied by households, as proposed by the Applicant, whose income (adjusted for household size) is not more than eighty percent (80%) of the Area Median Income (“AMI”), as determined by the United States Department of Housing and Urban Development (“HUD”) and the Subsidizing Agency (the “Affordable Units”). Affordable Units shall, upon initial designation, be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency, except for fluctuations based on changes of household eligibility income allowed by the Regulatory Agreement. The Applicant shall be responsible for maintaining records sufficient to comply with the Subsidizing Agency guidelines for the location of Affordable Units in the Project and occupancy of such Affordable Units by income-eligible households. As will be set forth more fully in the Regulatory Agreement, the location of the affordable units may change in the event that the income of a household occupying an affordable unit increases beyond allowable program limits. The Board acknowledges that affordable unit location is an issue within the exclusive jurisdiction of the Subsidizing Agency.
- B.2 All of the Project’s Affordable Units shall be restricted for rental to households earning no more than the maximum allowable household income, adjusted for household size, as determined by MassHousing or any substitute Subsidizing Agency. The Affordable Units shall be maintained as affordable in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply with applicable zoning requirements without the benefit of this Comprehensive Permit.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan (“AFHMP”) prior to the rental of any Affordable Units, and shall ensure that the Project complies with the Subsidizing Agency’s Fair Housing requirements.
- B.4 For the initial rent-up of the Project, the maximum number of Affordable Units allowed by law and the applicable subsidy program, but not more than seventy percent (70%) of the Affordable Units, shall be reserved for households that qualify under a local preference definition which must be approved by the Subsidizing Agency prior to any marketing efforts as part of the AFHMP. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project’s Monitoring Agent to effectuate this local preference, with an approved secondary lottery for all other Applicants. The Applicant shall assist the Department of Planning and Community Development in the submittal of any

**Comment [PH8]:** The Board may not want to include a local preference.

evidence required by the Subsidizing Agency to support this local preference requirement. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Department of Planning and Community Development in providing this evidence. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

**C. Submission Requirements**

- C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit (except as allowed by the Director of Planning and Community Development, as noted below), the Applicant shall:
- a. Deliver to the Board a check in a reasonable amount determined by the Director of Planning and Community Development to be used for staff to retain outside experts, if necessary, for technical reviews and inspections required under these conditions but at inception shall not exceed \$6,500 unless an alternate amount has been agreed upon by the Board and the Applicant. Said funds shall be deposited by the Board in an account pursuant to G. L. c. 44, § 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.
  - b. Obtain and file a copy of a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the Stormwater Pollution Prevention Plan (SWPPP) submitted along with the NPDES filing.

- c. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”), such approval to be that the plans conform to the requirements of this Comprehensive Permit and incorporate the relevant conditions herein. The Final Plans shall also incorporate all relevant conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record, the Professional (Civil) Engineer of record, and a Registered Landscape Architect. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans shall be submitted to the Board at least forty-five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the “Final Site Plan Submission Date”). The plans should reflect changes to surface parking, proposed grading, stormwater systems, the stream channel cross section, erosion and sedimentation control (particularly around the relocated Ryder Brook), and other relevant site features.
- d. Submit to the Board for its administrative approval, a landscaping plan with the Final Plans, signed and sealed by a Registered Landscape Architect, depicting the following:
  - i. Overall planting plan that includes a demarcation of clearing and the limits of work;
  - ii. Planting plans for drives showing shade trees and lighting fixture locations;
  - iii. Planting plan for relocated Ryder Brook;
  - iv. Planting plan for areas along Mill Brook;
  - ~~iii~~v. Plans of walkways in open space and recreation areas, if any;
  - ~~iv~~vi. Prototype planting plans for each building;
  - ~~v~~vii. Prototype screening plans for dumpsters, depicting plantings and fencing;
  - ~~vi~~viii. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;

~~viii~~. Tree protection and preservation plans

~~viii~~. Construction fencing along abutting property lines; and

~~ix~~. Construction details.

All plantings shall consist of native, non-invasive, ~~drought-tolerant~~non-cultivar species. Plantings installed along drives and walkways shall also be salt-tolerant. ~~Twelve (12) months after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening. All plantings installed onsite shall be monitored for three years after completion of plantings. A survival rate of 80% must be achieved at the end of the third monitoring year. If 80% survival is not achieved then replacement plants shall be planted.~~ The contract with the Management Company shall address ongoing maintenance of landscaping features.

- e. Submit to the Director of Planning and Community Development a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Director of Planning and Community Development, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Director of Planning and Community Development and other applicable staff has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Building Commissioner and/or Director of Planning and Community Development concerning the Final Site Plans within forty-five (45) days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.

f. The Applicant shall include on the Final Plans all of the various changes that have occurred during the hearing process. These plans should reflect site plan changes including but not limited to surface parking, proposed grading, stormwater systems, garage elevation, and other relevant site features.

g. The Applicant shall submit a revised final Stormwater Report including Operations and Maintenance Plan documenting the various changes in the design that have occurred during the review process.

~~f.h.~~ The Final Plans shall show designated snow storage areas. -All designated snow areas shall be outside of wetland resource areas.

~~g.i.~~ The Applicant must provide notification to the Arlington Assessor's Office for address and unit numbering.

C.2 Prior to the issuance of any building permits, the Applicant shall:

- a. Record this Comprehensive Permit and the Subdivision Plan endorsed by the Board with the Middlesex South Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Board.
- b. Submit to the Board and the Director of Planning and Community Development evidence of Final Approval from the Subsidizing Agency (DHCD), as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board a copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of such Regulatory Agreement with DHCD shall be complete prior to the issuance of any building permit. It is understood and agreed that Monitoring provisions may be included with the Regulatory Agreement, in lieu of a separate Monitoring Services Agreement.
- d. Submit to the Building Commissioner final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts ("Architectural Plans"). The Architectural Plans shall be submitted in such form as the Building Commissioner may request pursuant to the State Building Code.
- e. An automatic sprinkler system conforming with NFPA 13 and a fire alarm system conforming to NFPA 72 shall be required in all residential buildings. Both systems shall be monitored by a UL approved central station monitoring service.
- f. Obtain and file with the Building Commissioner a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
- g. Obtain all necessary building, electrical, plumbing, and associated permits required to begin construction of the Project required by state law (it is understood that compliance with this requirement is part of the building permit process, rather than required prior to the issuance of building

permits).

- h. The Applicant will be responsible for all applicable sewer permit, capacity impacts and privilege fees, as applicable.
- i. The Applicant will be responsible for all applicable water and sewer system fees as per officially promulgated fee schedules uniformly applicable to all other Town of Arlington projects.
- j. The Applicant shall perform additional test pits at the proposed stormwater basins to confirm groundwater elevations. These test pits shall be done during seasonal high groundwater conditions and shall be witnessed by the Town and/or its agent.

**D. Construction Completion/Certificate of Occupancy**

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- D.1 Prior to issuance of a certificate of occupancy for any structure in the Project, the Applicant shall:
  - a. Submit engineer's interim certification of compliance with utilities plan and profiles for such Phase (as applicable) to the Building Commissioner.
  - b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the structure and supporting infrastructure has been constructed in compliance with the Final Plans in all material respects.
  - c. Obtain acceptance from the Arlington Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the structure.
  - d. Obtain a sewer connection sign-off from the Arlington Department of Public Works for the structure.
- D.2 Prior to issuance of the certificate of occupancy for the Project, the Applicant shall:

- a. Submit to the Board, in digital file format and full-size paper copies, a final as-built plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.
- b. The Applicant shall provide to the Board evidence of a property management plan (if property management will be done in-house), or shall provide a copy of a contract with a Management Company if property management will be conducted by a third-party. The Applicant shall submit to the Board all information relating to the issues of building security, public access, pet policy, staffing, trash removal, vegetation management, and smoking policies, and other issues addressed in the conditions herein.

**E. Project Design and Construction**

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- E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with representatives from the Arlington Fire Department, the Department of Public Works (Arlington Water and Sewer Division and Engineering Division), Planning and Community Development and other Town staff and consultants as may be determined. The Applicant and the site general contractor shall host a meeting open to all members of the public to review the construction schedule, hours, policies, procedures, and other neighborhood impacts at least fourteen (14) days prior to the start of construction.
- E.2 Prior to the pre-construction conference, the Applicant shall submit a Construction Management Plan ("CMP") for administrative approval by the Board. The CMP shall provide documentation of various construction related activities, including:
  1. A Project Description and outline of primary construction tasks,
  2. A Project Schedule including hours of operation, duration of primary construction tasks and estimated completion date,
  3. Project logistics, including staging areas, truck routes, laydown areas, contractor parking, and construction traffic management,



4. Site Management including noise mitigation, dust control and security,
  5. Public Safety and Coordination, including contact information and site inspections.
  6. Coordination with the Town to provide advance email or website information regarding construction activities for public information.
- E.2 The Applicant shall permit representatives of the Board to observe and inspect the Property and construction progress until such time as the Project has been completed and the final occupancy permit issued.
- E.3 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations.
- E.4 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.
- E.5 During construction, the Applicant shall conform to all local, State, and Federal laws and provide advance notice to abutters per the Town's Residential Construction Control Agreement regarding noise, vibration, dust, and blocking of Town roads in order to accommodate delivery of materials to the site or for other construction staging purposes. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.
- E.6 Appropriate signage shall be shown on the Final Plans, consistent with the sign information shown on the Approved Plans. A temporary sign including the name and address of the project and contact information for the Applicant, general contractor, engineers, architect, and other relevant parties shall be posted on site for the duration of construction operations. The applicant shall work with the Arlington Open Space Committee and Arlington Historical Commission on the development of interpretive signage as per bh+a Landscape Plan dated June 16, 2020.
- E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.
- E.8 The Applicant shall use electric heat and hot water for the Project, if reasonably available at the time of the submission of Final Plans.

**Comment [KL9]:** Page 3 of  
<https://www.arlingtonma.gov/home/showdocument?id=55007>

This was discussed in an earlier hearing, but the detail is absent from April 2021 plans

**Comment [KL10]:**

**Comment [PH11]:** Is the Applicant proposing electric heat/hot water?

- E.9 The Applicant shall install lighting on the site that conforms to the Town of Arlington's Zoning Bylaw and Town Bylaw. Lighting shall be down-lit/shielded to prevent light spillover onto surrounding properties and comply with dark sky requirements. Management of outdoor lighting shall be the responsibility of the Applicant.
- E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground. The contract with the Property Management Company shall note that no satellite dishes shall be allowed. The general contractor shall be responsible for coordinating all subsurface work with Dig Safe prior to the commencement of any excavation.
- E.11 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Building Commissioner as meeting design specifications, as applicable.
- E.12 The Applicant shall test the soil during construction to confirm soil types in the areas of the infiltration system. Such testing shall be witnessed by the Board's designee. All unsuitable material, if any, discovered in excavation for the infiltration system shall be removed and disposed of in accordance with State and local regulations.
- E.13 Construction activities shall be conducted between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays, Sundays, or legal holidays. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; loading of construction dumpsters and erection of new structures. All off-site utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on the Property during construction.

**Comment [PH12]:** The Board needs to decide whether it wants to impose this as a condition. I believe that there are overhead lines on the Property currently.

- E.14 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. During construction, the site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.15 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- E.16 All dumpsters serving the Project shall be enclosed and covered (with the exception of construction dumpsters used during construction). The Board shall review the dumpster location as part of the approval of the Final Plans if different from what has been shown on the Approved Plans.
- E.17 All retaining walls visible from a public way or direct abutters, as determined by the Building Commissioner based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.
- E.18 Snow shall be stored within the areas of the Property designated on the Approved Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site. Snow may not be placed in or adjacent to resource areas.
- E.19 The Applicant shall comply with all applicable local, state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP's Noise Policy contained in DAQC Policy 90-001 as well as the Arlington Noise Abatement Bylaw contained at Title V, Section 12. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.

- E.20 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways and driveways providing access to both the residents of the Project and emergency vehicles. Neither snow nor sand may be placed in or adjacent to resource areas.
- E.21 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.
- E.22 The Applicant shall comply with DPW requirements regarding curb-cut permits.
- E.23 To the extent earth removal is necessary, the Applicant shall prepare an earth removal plan, showing all necessary cuts and fills, and describing the number of truck trips necessary for the earth removal.
- E. 24 All catch-basins shall have oil/water separators as shown on the Approved Plans.
- E. 25 Project sidewalks and pathways/walkways shall be compliant with the requirements of the Americans with Disabilities Act (“ADA”) and the requirements of the Massachusetts Architectural Access Board (“AAB”).
- E. 27 This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for the issuance of Building Permits and Certificates of Occupancy by the Building Department under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals as published in the Town regulations or bylaws, including but not limited to building permits, inspections, water and sewer connections, and curb cuts.
- E.28 Ryder Street shall not be used for construction deliveries between the hours of 7:30 AM to 8:30 AM and 3:00 PM to 4:00 PM on school days as provided in the letter from Krattenmaker, O’Conner & Ingber, PC to Christian Klein, Chairperson dated June 8, 2021.
- E.29 The Applicant shall perform a preconstruction and post construction survey of adjacent properties on Ryder Street and the Massachusetts Avenue right of way including photographs and/or video.
- E.30 The Applicant shall monitor vibrations in the vicinity of the properties adjacent to Ryder Street throughout the course of construction. The location of vibration monitors shall be coordinated with the Board or its designee.
- E.31 The Applicant has submitted truck path diagrams to the Board showing turning paths for construction vehicles accessing the site. The diagrams were prepared by

Bohler Engineering dated June 7, 2021. The truck paths shall be maintained free of stockpiles, stored equipment, debris and other construction materials to ensure adequate construction and emergency access.

E.32 The Applicant shall hire a licensed Pest control company to conduct a comprehensive assessment of pest activity on the property and then develop and implement an Integrated Pest Management Plan for all phases of the project (before, during, and after construction).

**Comment [KL13]:** Per request of the Health Department (Natasha Waden)

**F. Traffic/Traffic Safety Conditions / Sidewalks**

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F.1 Site access will be provided via Ryder Street to the west, an existing right of way from Massachusetts Avenue to the south, and Quinn Road to the east. The Site will be signed directing vehicles to enter via the Massachusetts Avenue right of way or Quinn Road and exit via Ryder Street. Both the Ryder Street and Massachusetts Avenue /Quinn Road driveways will allow two-way travel for existing abutting uses. Bicycle users will be allowed to enter the site from Ryder Street.

**Comment [DA14]:** Since bicycles are vehicles I think it's important to note that they can enter the property from Ryder Street, as has been discussed.

Also I don't know if this should be more descriptive to explain that drivers could exit the site via Quinn Road but it would be signed such that they could not exit the site from "the existing right of way from Massachusetts Ave"

F.2 The Applicant shall install all proposed traffic signs and pavement markings shown on the approved final plans. Signs and markings shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), latest edition and other applicable state or local requirements.

F.3 The proposed site provides 128 parking spaces in a combination of structured garage spaces and surface parking spaces. No changes to the number, configuration or designation of parking spaces shown on the final approved plans shall be made unless approved by the Board through a modification process.

**Comment [PH15]:** Confirm whether the total number of parking spaces is 128 or 135.

**Comment [KL16]:** See note above identifying discrepancies between parking on site/arch plans and project waiver request

F.4 Turn restrictions shall be incorporated for vehicular traffic exiting the property at Ryder Street. These restrictions include prohibiting right turns onto Ryder Street except for bicycles. Parking restrictions for residents shall also be incorporated. To reinforce these restrictions, the Applicant shall:

- a. Provide a transportation package to all residents which shall include turn restrictions at Ryder Street, access/egress restrictions, no resident or guest parking on Ryder Street.
- b. Have the on-site property ~~manger~~manager promptly address any reported infractions with the resident including providing written warnings.

- c. Advise residents who have repeated infractions and warnings that their lease will not be renewed once it terminates.
- F.6 Guest parking will be managed by the on-site property manager. Guest parkers shall be required to register their vehicles with the property manager in advance and shall be assigned a designated parking space.
- F.7 Four (4) short term parking spaces shall be provided and maintained in the courtyard for taxis, rideshare vehicles, deliveries and visitors remaining for 1 hour or less.
- F.8 The Applicant shall ensure that emergency vehicles can adequately maneuver through the site. The Arlington Fire Department shall review the Final Plans to ensure compliance with this condition.
- F.9 The Applicant shall provide \_\_\_\_ long-term bicycle parking spaces that are covered and secure.
- F.10 The Applicant shall provide \_\_\_\_ outdoor short-term bicycle parking spaces. These spaces shall be near a location of public building access, such as the courtyard area.
- F.11 The Applicant shall provide new residents with transportation information packets with information on getting around Arlington sustainably.
- F.12 The Applicant shall provide Transitscreen installation in the building lobby which depicts accurate real-time information for public transit, car sharing, and ride sharing services within one (1) mile of the site.
- F.13 With the exception of designated affordable housing units, parking for units shall be subject to an additional monthly fee, separate from rent, in order to discourage motor vehicle ownership in the Project.
- F.14 The Applicant shall provide electric vehicle charging stations at 5% of the parking spaces in the garage. The Applicant shall provide for the expansion of the number of charging stations in accordance with tenant demand.

**G. Police, Fire, and Emergency Medical Conditions**

- G.1 The Applicant shall provide professional property management and maintenance personnel on the premises during typical business hours and an emergency contact name and number for tenants and the Arlington Police Department and Fire Department.

**Comment [DA17]:** I'm not sure how useful this is. It made more sense for Thorndike Place since that property is so close to Alewife station. Also I don't think there are any car sharing services (i.e. Zipcar) within a mile – the closest is at Russell Common Lot over a mile away.

**Comment [PH18]:** Is this a condition the Board wants to impose?

**Comment [DA19]:** This makes sense, although with a 1:1 parking ratio (essentially) the limited parking supply will diminish overall car usage. They will need to manage who gets to have parking spaces.

**Comment [PH20]:** Again, does the Board want to impose this as a condition?

**Comment [DA21]:** Not sure if Ken needs to weigh in here, assuming this condition is requested. 5% of 135 spaces (I think that is the actual proposed total) equals about seven EV parking spaces. The expansion of charging stations would assume that other spaces are "EV ready" [Ken recommends they are Level 2 charging stations and ensuring at least 20% of the rest of the parking spaces are EV ready]

**Comment [PH22]:** See above.

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- G. 2 Stairwells and garages must be two-hour fire rated. Residential units must be one-hour fire rated.
- G.3 The residential structures shall be fully sprinklered to NFPA regulations.
- G.4 Compliance with all State Building Code and NFPA requirements relating to fire access and safety shall be met.
- G.5 All elevators must have emergency generator backup.
- G.6 The Project shall maintain fire access to all four sides of each residential structure at all times.
- G.7 The Project shall provide adequate external lighting to ensure safety of the residents of the Project. External lighting shall conform to the requirements of the local Regulation of Outdoor Lighting [Title V, Section 14].
- G.8 As proposed by the Applicant, the Project shall have a card access system with time stamps and shall have a superintendent on-site to address security concerns with the Police Department.
- G.9 During times of construction, the Project, including all structures shall be accessible to Fire Department and other emergency vehicles. Additionally, all hydrants shall be operational during construction in accordance with NFPA requirements. Standpipes shall be operational on each floor during construction, as required by the Building Code and the Fire Department.
- G.10 The Applicant shall consult with the Fire Department prior to the commencement of construction to provide an on-site emergency plan, which shall be updated as necessary throughout the construction process.

#### **H. Water, Sewer and Utilities**

- H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project.
- H.2 All water and sewer infrastructure shall be installed in conformance with the Arlington Water and Sewer Division's technical requirements. The Applicant shall provide the Arlington Water and Sewer Division with calculations to ensure the distribution system for the area has the necessary capacity to meet system demand required prior to the commencement of construction.

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- H.3 Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the Arlington Fire Department. If the Arlington Fire Department approves different hydrant locations, such modification shall be accepted administratively as an insubstantial change pursuant to 760 CMR 56.05(11).
- H.4 The service size for the domestic water service should be verified by the Arlington Water and Sewer Division and information on the fire service size and requirements should be verified by the Arlington Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Arlington Water and Sewer Division. The Applicant shall replace the water main, hydrants and gate valves. Any connections to the Town water main shall be triple-gated and a tee connection.
- H.5 The water and sewer utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town requirements and protocols, except as may be waived herein.
- H.6 Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like. The Applicant shall request a Grant of Location from the Select Board for any installation of new utility poles or underground conduit in the public right of way as needed.
- H.7 The Applicant shall be responsible for all trash and recycling removal from the Property. The Town of Arlington shall not have any responsibility for trash, recycling, compost, and/or yard waste pickup at the Property.
- H.8 Fire hydrants shall remain private, and shall be maintained by the Applicant.



- H.9 The location of the existing utility pole within the right of way from Massachusetts Avenue has been noted as a safety concern by the Board and the public. The Applicant has indicated that the existing utility pole cannot be relocated due to various constraints. The Applicant has stated that they have worked with the utility owner and adjacent property owner but have not come to a feasible resolution. The Applicant should continue to work to resolve this issue including further exploration of relocating the pole further east but within the right of way. Prior to initiating construction, the Applicant shall provide the Board with a written summary of the coordination efforts between the Applicant and the utility owner regarding the relocation of the pole. If it is finally determined that the pole cannot not be relocated, the Applicant, prior to construction, shall provide the Board with a plan for mitigating safety and visibility issues related to the pole.

**I. Wetlands/Floodplain/Environmental Conditions**

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- I.1 Prior to the commencement of construction, erosion control measures shall be installed consistent with the Approved Plans.
- I.2 No uncovered stockpiling of materials shall be permitted within the 100 foot Wetland Buffer Zone or Adjacent Upland Resource Areas ("AURA") or other resource areas.
- I.3 No dumpsters shall be allowed within the AURA or other Resource Areas.
- I.4 No heavy equipment may be stored within the AURA of other Resource Area.
- I.5 Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily.
- I.6 Any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain, or adjacent property. Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin.

- I.67 Prior to commencement of construction, the Applicant must hire a qualified environmental monitor with professional credentials to be selected by the Board and to be on-site throughout the duration of the project. This period shall begin when siltation controls are installed and shall end with issuance of a Certificate of Compliance. The monitor shall submit an electronic report to the ZBA weekly regarding construction progress, relation to resource areas, and shall state whether such work is in their professional opinion in compliance with the comprehensive permit. During the duration of the project, the qualified environmental monitor shall also submit an electronic report after every rain event exceeding 0.5 inches of rain in a 24-hour period to the ZBA regarding the condition of the site during and after the rain event, as well as the status of erosion controls and any additional measures to address stormwater management issues caused by said rain event. The ZBA reserves the right to change the frequency of inspections based on contractor performance, weather, or site conditions. All materials required to be submitted to the ZBA shall also be submitted to the Environmental Monitor.
- I.78 The Applicant must hire a professional engineer to oversee the installation of the stormwater management system. A stormwater mitigation report must be submitted to the ZBA within 10 days of the completion of the stormwater management system. The stormwater report shall include as-built plans, photographs from installation, and a written summary of the installation of the stormwater management system and stormwater best management practices (e.g., porous pavement and other stormwater features, as applicable).
- I.9 The Applicant shall submit the contact information of the party responsible for monitoring and maintaining the planted vegetation within stream relocation areas to the ZBA. Should any changes be made to this party, the ZBA shall be notified. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- I.810 To avoid adding excess nitrogen runoff, the Applicant shall only treat the planted areas within resource areas with slow release nitrogen fertilizer. Application of this fertilizer cannot occur in the summer, or after storm events. Lawn fertilizer shall only be applied twice a year, in spring and fall. The application of plant nutrients shall otherwise comply with 330 CMR 31.00. No other herbicides or treatment methods are approved. No pesticides or rodenticides shall be used to treat pest management issues within Resource Areas. These shall be continuing conditions in perpetuity that survives the expiration of this permit.

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- | ~~I.9~~I.11 Pervious surfaces shown on the project plans shall be maintained as specified in the stormwater report and logs/reports shall be maintained by the Applicant. Pervious surfaces shown on the project plans shall not be replaced by impervious surfaces. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- | ~~I.40~~I.12 No snow storage is permitted within the AURA or other Resource Areas. A snow storage plan shall be submitted to the ZBA prior to construction completion. If these areas are insufficient for storage during the snow season, snow shall be removed from the site. Sediments and debris shall be removed from snow storage areas in the early spring. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- | ~~I.44~~I.13 The Applicant shall protect all adjacent catch basins using silt socks during construction.
- | ~~I.42~~I.14 The Applicant shall conduct catch basin sump cleanings at the end of the project work period.
- | ~~I.43~~I.15 The Applicant shall submit copies of the SWPPP inspection reports to the ZBA within 10 days of the date of each report.
- | ~~I.44~~I.16 The Applicant shall submit for review and approval by the ZBA an invasive management plan for work in the AURA and other Resource Areas outlining all locations for invasive management, the species and quantities of invasive plants to be managed, and the method of management.
- | ~~I.45~~I.17 All mitigation plantings and all plantings within resource areas shall be native and be installed and maintained according to the standards of the American Association of Nurserymen (AAN). No cultivars of native plantings shall be allowed. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- | ~~I.46~~I.18 All plantings planted and invasive species removed through this project in Resource Areas or as mitigation shall be monitored for three years. A monitoring report shall be submitted annually in June for the three year monitoring period, reporting on the health of the new plantings and the success of the invasive plant management. The annual report shall identify any plantings that did not survive and summarize the replacement of the plantings. A survival rate of 80% must be achieved at the end of the third monitoring year. If there is less than a 80% survival rate of the plantings after the third year, the Applicant must submit recommendations for replacements to the ZBA for approval.

- I.4719 The Applicant shall protect all area trees per the Town Wetlands Protection Regulations, Section 24 Vegetation Removal and Replacement, protecting trees through securing (not nailing) 2x4 boards, between 6-8 feet in length, around tree base. The boards shall be installed vertically such that one end is installed directly into the ground. Alternative protection measures must be approved by the ZBA.
- I.20 The Notice of Intent filed under the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and its Regulations (310 CMR 10.00) shall also include a detailed evaluation addressing all requirements under the Application for Vegetation Removal in accordance with Section 24 – Vegetation, E (1) through E (7) of the Arlington Wetlands Protection Bylaw. This should include the elements described in the guidance provided in Section 24 E as follows:
- a. Narrative describing existing conditions, proposed plantings, list of existing and proposed species, size of existing species and proposed species, quantity plants before and after revegetation and the rational the removal and maintenance plan.
  - b. Affirmation of the Revegetation Activities: All plans must be accompanied by written testimony and scale diagram from a certified arborist or wetland scientist or landscape architect. The document must include at a minimum the necessity of vegetation removal, surface area to be removed, quantity of individual plants by species.
  - c. Planting Plan: Drawn to scale, properly identified resource area and buffer zone and the project site, location of replacement species, comply with (AAN), erosion controls, estimated tree canopies after 15 years of growth, name, sizes and locations of trees to be planted, and total area of SF of the area shaded by the canopies.
  - d. Existing species list
  - e. Replacement species list
  - f. Rational for Removal
  - g. Maintenance Plan
- I.4821 The Land Under the relocated Brook (Land Under Water Bodies) shall be protected in perpetuity- through a recorded deed restriction. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- I.4922 The Bank of the relocated Brook shall be protected in perpetuity- through a recorded deed restriction. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- I.23 Work associated with re-routing the Ryder Brook channel shall be completed during Phase 1 of the Construction Phasing Plan to ensure flow through the Site will be uninterrupted during construction. Within Phase 1, the following work associated with re-routing shall be completed:

- a. Grading the proposed Ryder Brook channel.
- b. Stabilizing the Ryder Brook substrate with the approved stone/substrate material
- c. Stabilizing the Banks and adjacent areas with seed.

I.24 River stone and broken stone to be used as the substrate for Ryder Brook shall consist of washed material and shall be free from overburden, spoil, shale and organic material to protect water quality.

I.25 Erosion controls shall be installed upgradient the Banks of the relocated Ryder Brook once the channel has been graded and stabilized.

I.2026 All mitigation as proposed as part of this project shall remain in perpetuity. The approved planting areas, invasive removal areas, the water quality units, and the stormwater system shall remain in perpetuity and if replacement is necessary, shall be subject to the approval of the Commission. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

**J. Other General Conditions**

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- J.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later, as per 760 CMR 56.05(12)(a). In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time construction authorized by the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.
- J.2 The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- J.3 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.
- J.4 This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction. Overnight parking of vehicles on public ways is prohibited in the Town of Arlington.

- J.5 In the event that the Applicant (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, within fourteen (14) days of notification by the Town to the Applicant/Management Company, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town opts to perform such maintenance in accordance with this paragraph, the Applicant shall reimburse the Town within forty-five (45) days for all of its reasonable expenses related to such work.
- J.6 The Project entrance way and interior roads, and drainage systems associated therewith shall remain private, and the Town shall not have any legal responsibility for the operation and maintenance of such. The Town shall also have no obligations relating to the proposed recreational areas on the Property, the construction and operation of which shall be the sole responsibility of the Applicant. ~~The Applicant is required to maintain the sidewalk along Dorothy Road clear of snow per local ordinance.~~
- J.7 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) enforcement by the Zoning Enforcement Officer pursuant to G. L. c. 40A, § 7; (b) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

#### **DECISION**

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of one hundred and ~~thirty (130)~~ twenty-four (124) rental apartment units pursuant to Chapter 40B, §§ 20-23, for the development described above.

#### **RECORD OF VOTE**

Decision on Application for Comprehensive Permit  
1165R Mass MA Property, LLC  
1165R Massachusetts Avenue, Arlington, MA  
\_\_\_\_\_, 2021  
Page 33 of 34

The Board of Appeals voted \_\_\_\_\_, at its public meeting on \_\_\_\_\_, 2021,  
to grant a Comprehensive Permit subject to the above-stated Conditions, with this  
Decision as attested by the signatures below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 2021

Filed with the Town Clerk on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Town Clerk

**Notice:** Appeals, if any, by any party other than the Applicant, shall be made pursuant to  
Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within  
twenty (20) days after the filing of this notice in the Office of the Town Clerk,  
Town Hall, Groveland, Massachusetts. Any appeal by the Applicant shall be  
filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within  
twenty (20) days after the filing of this notice in the Office of the Town Clerk.

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Decision on Application for Comprehensive Permit  
1165R Mass MA Property, LLC  
1165R Massachusetts Avenue, Arlington, MA  
\_\_\_\_\_, 2021  
Page 34 of 34



**KRATTENMAKER O'CONNOR & INGBER P.C.**

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CHARLES G. KRATTENMAKER, JR.  
MARY WINSTANLEY O'CONNOR  
KENNETH INGBER

OF COUNSEL: RAYMOND SAYEG

July 19, 2021

Christian Klein, Chairperson  
Arlington Zoning Board of Appeals  
51 Grove Street  
Arlington, MA 02476

Re: 1165R Massachusetts Avenue, Arlington, MA – Comprehensive Permit

Dear Christian:

Thank you for getting me the second iteration of the draft decision so quickly.

I have reviewed it and have the following additional edits:

1. Page 17 – C.1(d) – Revise the first line as follows: “All plantings shall consist of native and non-invasive species.”

Our landscape architect advises that cultivar plants need to be used to achieve the landscape design/plan submitted to the Conservation Commission.

2. Page 17 – C.1(g) – Revise as follows: “The Applicant has submitted . . .”
3. Page 30 – I.6 – Revise as follows: “While no dewatering operations are anticipated by the Applicant, . . .”
4. Page 32 – I.20 – Revise as follows: “The Notice of Intent filed under the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and its Regulations (310 CMR 10.00) shall also include a detailed evaluation addressing the elements described in the guidance provided in Section 24E as followed: . . .”

5. Page 33 – I.23 – Revise this paragraph as follows:

“As part of the Notice of Intent Process associated with rerouting the Ryder Brook channel, the Conservation Commission shall review the Applicant’s proposal for the scheduling of the work to be performed for rerouting the Ryder Brook which work shall include:

- a. Grading the proposed Ryder Brook channel.

**KRATTENMAKER O'CONNOR & INGBER P.C.**

Christian Klein, Chairperson  
July 19, 2021  
Page 2

- b. Stabilizing the Ryder Brook substrate with the approved stone/substrate material.
- c. Temporarily stabilizing the Banks and adjacent areas with seed."

I had reduced the local preference from 70% to 50% based on comments from Director Raitt and a majority of the members of the Select Board. Your Board may determine otherwise.

While reviewing the draft decision this evening, I will provide the Board with the rationale for the revisions made to the provisions provided by the Conservation Commission.

In advance, I thank you.

Very truly yours,

Mary Winstanley O'Connor

MWO/ccg  
6926

cc: Patrick Hanlon, Vice Chairperson (via email)  
Paul Haverty, Esq. (via email)